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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff,)

vs.)

GERALD ARMSTRONG,)

Defendant.)

No. 157680

GARY W. THOMAS

JUDGE

JOHN P. MONTGOMERY

COURT EXECUTIVE OFFICER

ELAINE PASSARIS

REPORTER

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For the Defendant (In Pro Per):

Gerald Armstrong
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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

COPY

CHURCH OF SCIENTOLOGY,	.	Superior Court
INTERNATIONAL, etc.	.	Case No. BC 052-395
	.	
Plaintiff,	.	
vs.	.	
	.	
GERALD ARMSTRONG, et al.,	.	
	.	
Defendant.	.	Los Angeles, California
	.	May 26, 1992
.....	.	10:05 a.m.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

THE HONORABLE RONALD M. SOHIGIAN, PRESIDING
DEPARTMENT 88

TRANSCRIPT ON APPEAL

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HUB LAW OFFICES

COURT RECORDER:
J. W. CRUSE

TRANSCRIPTION BY:
PARRIS TRANSCRIPTS
P.O. Box 41754
Los Angeles, Ca 90041-9998
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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~~OCT.~~ ~~SEP~~ 14 1992 J.V.

LOS ANGELES
SUPERIOR COURT

1 make it any easier for us to tell you to what exhibits of the
2 plaintiffs we stipulate.

3 THE COURT: I don't either. Why do you make that
4 point?

5 MR. GREENE: Well, because there's a couple -- one,
6 if there are items to which we stipulate, we have submitted
7 legal arguments that may truncate this proceeding if the Court
8 pleases to address those first, and if not, we can go ahead.
9 That is merely a suggestion.

10 THE COURT: I don't know what you're talking about.

11 MR. GREENE: What I'm talking about is --

12 THE COURT: I don't think that's entirely my fault.

13 MR. GREENE: -- one, the pending demurrer to which,
14 when we were last before Your Honor we called to your
15 attention and the argument submitted therein in Local Rule
16 314.

17 THE COURT: Make your argument on that point.

18 MR. GREENE: Okay. On that point, what the
19 plaintiffs are seeking here is an injunction compelling the
20 specific performance of the settlement agreement at issue. In
21 order for plaintiff to adequately see and make on its face the
22 necessary showing to be entitled to that relief, the plaintiff
23 has got to affirmatively allege that on its face, the
24 agreement is fair, just, and reasonable to the defendant. The
25 pleading required is different from that which is required
26 from an ordinary breach of contract action. The reason for
27 that, of course, is that an action for --

28 THE COURT: I understand the reason for it. Is that

1 the -- the totality of your point, that there's not an
2 adequate allegation that the agreement is fair, just and
3 reasonable?

4 MR. GREENE: And in support of that, the public
5 policy arguments that --

6 THE COURT: Okay. Plaintiff?

7 MR. WILSON: Yes, Your Honor. First of all, I'm not
8 going to bother the Court with going through the whole
9 Complaint and showing the Court what has been alleged, but we
10 have alleged very specifically the agreement. We've alleged
11 the consideration that was paid. We've alleged the -- the --
12 in fact, we've incorporated the agreement and we've alleged
13 the breach is now to the extent that the Complaint is not --
14 is deficient and does not support the relief because the magic
15 language -- the conclusory magic language, I might add -- that
16 the -- that the consideration wasn't fair, just and equitable,
17 I would point the Court to a provision of the law in Discovery
18 Manual which provides -- it talks about this matter of a
19 demurrer being pending.

20 THE COURT: Don't make any further argument; I
21 understand the points being made.

22 MR. WILSON: I want -- I want --

23 THE COURT: Stop. I understand the points being
24 made on both sides; I understand that this is an objection to
25 any further proceedings with respect to this application for
26 provisional relief. The objection is overruled. Go forward
27 on the merits; make your objections if you have any to the --
28 pardon me -- to the evidence adduced by the other side.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

893

TE: 07/02/92

DEPT. 30

HONORABLE David Horowitz

JUDGE

S. ROBLES

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. AGUIRRE, CSL

Deputy Sheriff

CECIL KNICKERBOCKER #8684 Reporter

8:30 am

BC052395
Church of Scientology, etc.
VS
Gerald Armstrong, et al.

170.6 JUDGE GEERNAERT

Plaintiff LAURIE J. BARTILSON (x)
Counsel

Defendant PAUL MORANTZ (x)
Counsel

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANT TO PLAINTIFFS AMENDED VERIFIED COMPLAINT FOR DAMAGES AND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF FOR BREACH OF CONTRACT;

MOTION OF THE ABOVE TO STRIKE SURPLUSAGE, IRRELEVANT, AND IMPROPER MATERIAL FROM AMENDED VERIFIED COMPLAINT FOR DAMAGES AND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF FOR BREACH OF CONTRACT;

Demurrer OVERRULED. Plaintiff has stated a cause of action.

Whether the agreement is just, reasonable, supported by adequate consideration, or against public policy are matters of proof.

Motion to Strike:

GRANTED as to paragraph 3, page 3, lines 8-10. The language "appears to delight" is inflammatory, irrelevant and is improper.

GRANTED as to paragraph 12, page 4 - page 6, line 13. The language contained in paragraph 12 is inflammatory and unnecessary and is improper. DENIED as to remaining requests to strike.

The Court makes no ruling as far as the contract is concerned. Answer within 20 days.

Moving party shall give notice.

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HUB LAW OFFICES

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

GERALD ARMSTRONG,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent,

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Real Party in Interest.

) No. B068401

) (Super. Ct. No. BC 052395
) (David Horowitz, Judge)

) ORDER

) COURT OF APPEAL - SECOND DIST.

) FILED

) NOV 20 1992

) JOSEPH A. LANE

) Clerk

) Deputy Clerk

THE COURT:*

The petition for writ of mandate has been read and considered and is denied for absence of facts showing entitlement to extraordinary relief.

*WOODS (A.), P.J., EPSTEIN, J., TAYLOR, J**

**Assigned by the Chairperson of the Judicial Council.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

) CASE No. CV 88-1786 JMI(Ex)

Plaintiffs,

) MEMORANDUM IN SUPPORT OF
) MOTION FOR A PRELIMINARY
) INJUNCTION

v.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Defendants.

) Date: January 8, 1990
) Time: 10:00 a.m.
) Dept: Honorable James M. Ideman

RELIGIOUS TECHNOLOGY
CENTER, et al.,

Counterclaimants,

v.

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

Counterdefendants.

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PRELIMINARY STATEMENT

1
2 On April 9, 1987, long before the commencement of this
3 lawsuit, the parties in this case entered into mutual releases.
4 In these releases, plaintiffs renounced any and all claims and
5 causes of action, both known and unknown, they had against
6 defendants. Plaintiffs also promised to maintain
7 confidentiality with respect to their experiences with the
8 Church of Scientology and any knowledge or information they had
9 concerning the Church of Scientology and not to voluntarily
10 participate or cooperate in other proceedings against
11 defendants. These release agreements were supported by
12 valuable consideration -- consideration which plaintiffs to
13 this day continue to retain and enjoy.

14 Instead of fulfilling their end of these release
15 agreements, however, plaintiffs have flagrantly and repeatedly
16 violated their promises. Plaintiffs commenced this lawsuit and
17 on numerous occasions have violated the confidentiality
18 agreements. Plaintiffs have given lengthy interviews to the
19 Los Angeles Times and voluntarily assisted others in
20 litigation against the Church. (See Declaration of Kendrick
21 Moxon.) Plaintiffs' repeated disregard of the release
22 agreements has irreparably injured defendants and will
23 continue to do so unless a preliminary injunction is issued.

24 To avoid further irreparable injury, defendants seek a
25 preliminary injunction enforcing the release agreements until
26 this Court has an opportunity to finally determine whether
27 plaintiffs' claims are barred by the agreements. If necessary,
28 defendants request a separate evidentiary hearing on the issues

1 raised by their Motion for a Preliminary Injunction, including
2 questions of fact concerning the validity and effect of the
3 releases signed by plaintiffs.

4 Such hearing is particularly important, because this Court
5 indicated at a status hearing in this case, its apparent view
6 that defendants' potentially dispositive motions may be decided
7 on "whether or not the free will of the plaintiffs was
8 overborne" by defendants. (Hearing, July 17, 1989, p. 10.)

9 An evidentiary hearing on the issues raised by the Motion for a
10 Preliminary Injunction will put an end to plaintiffs' practice
11 of asserting the conclusory, self-serving but contradictory
12 claims of "duress" or "brainwashing" which have marked their
13 defenses to previous motions. (See Defendants' Motion to
14 Award Sanctions and Attorneys' Fees, August 15, 1989, passim;
15 Defendants' Reply Memorandum in Support of Motion for Summary
16 Judgment, May 1, 1989, at 3-5, 8-10, 17-21, 23-25, 29-30,
17 35-36.)

18 STATEMENT OF FACTS

19 A. The Releases

20 On April 9, 1987, plaintiffs Richard Aznaran and Vicki
21 Aznaran ("plaintiffs") left their staff positions with
22 defendants. At that time plaintiffs each entered into
23 identical Mutual Release Agreements with defendants
24 (hereinafter the "Releases" or "agreements"). Copies of these
25 Releases are annexed to the Moxon Declaration as Exhibits A
26 and B. Pursuant to the Releases, plaintiffs gave up "any and
27 all claims, demands, damages, actions and causes of action of
28 every kind and nature, known or unknown, from the beginning of

1 time to and including the date hereof," which they could have
2 asserted against the defendants. (Ex. A at para. 3; Ex. B
3 at para. 3.)^{1/} The Releases also required that plaintiffs
4 "maintain strict confidentiality and silence with respect to
5 [their] experiences with the Church of Scientology and any
6 knowledge or information [they] may have concerning the Church
7 of Scientology ..." (Ex. A at para. 6C; Ex. B at para.
8 6C.) The Releases also contained a covenant not to sue. (Ex.
9 A at paras. 3, 6B; Ex. B at paras. 3, 6B.) Finally,
10 plaintiffs promised not to voluntarily assist, cooperate or
11 testify in any proceeding against defendants, unless required
12 to do so by lawful process. (Ex. A at paras. 6E; Ex. B at
13 paras. 6E, 6F.)

14 On April 9, 1989, plaintiff Richard Aznaran executed a
15 separate "Declaration and Release of Claims," concerning,
16 inter alia, his employment from January 24, 1986 until
17 April 1, 1987. In that document, he released "Norman F.
18 Starkey individually and as Trustee of Author's Family Trust,
19 the Estate of L. Ron Hubbard, Author Services, Inc. and their

20 1. By their terms, the Releases protected the Religious
21 Technology Center; Church of Scientology International; Church
22 of Scientology of California; Church of Spiritual Technology;
23 all other Scientology organizations or entities as well as the
24 officers, agents, representatives, employees, volunteers,
25 trustees, directors, successors, assigns, and legal counsel of
26 each of the foregoing organizations or entities; Pat Broeker
27 and Anne Broeker ...; and Author Services Incorporated, its
28 officers, agents, representatives, employees, volunteers,
trustees, directors, successors, assigns, and legal counsel;
the Estate of L. Ron Hubbard, its executor, beneficiaries,
legal counsel and employees; Author's Family Trust, its
trustees, employees, beneficiaries, and legal counsel. Ex. A
at para. 1; Ex. B at para. 1. Such releases are thus binding
as to all defendants in the instant lawsuit. Eustace v.
Dechter, 53 Cal.App.2d 726, 128 P.2d 367 (1942) (a release
binding "all persons" is valid against persons not specifically
named in it).

1 respective employees, agents, attorneys, heirs, successors,
2 alter egos, executors, administrators and assigns ... from any
3 and all debts, demands, claims, causes of action in law and in
4 equity, liabilities, costs or expenses of any nature
5 whatsoever, known or unknown ..." (Ex. C.)

6 Plaintiffs took substantial consideration in exchange for
7 these releases, including a \$20,000 loan on very favorable
8 terms. The principal need not be repaid at all for ten (10)
9 years. The interest is only five percent (5%), and need be
10 paid only once a year. To this day, plaintiffs have failed to
11 repay this loan or make any interest payments, despite the fact
12 that three times they have been asked by written notice for
13 interest payments due. (Declaration of Mark C. Rathbun at
14 para. 13.) No interest at all has been paid for 1987, 1988 or
15 1989. This loan was extremely important to the Aznarans, as it
16 enabled them to establish themselves in Dallas, Texas and to
17 begin a new business there. (Declaration of Mark C. Rathbun
18 at para. 7.)

19 Plaintiffs also took an indemnity against all civil claims
20 brought against them arising from their staff positions within
21 the Church of Scientology and Religious Technology Center.
22 This indemnification clause alone was of considerable value to
23 plaintiffs. Vicki Aznaran has been named as a defendant in two
24 separate lawsuits. Defendants honored their indemnity
25 agreement in both cases. In one case, damages of over one
26 billion dollars are sought. Defendants obtained a dismissal of
27 the two defendants served at that time. (Ex. D.) In the
28 second case, in November 1988, Vicki Aznaran was named in a

1 sixty-million dollar damage action, Pennea et al. v. CSI
2 and Aznaran, et al., Circuit Court of the Seventeenth
3 Judicial District, Broward County Florida, No. 88-30050 CZ.
4 (See Ex. E.) Defendants moved to dismiss and successfully
5 negotiated the dismissal of that case on January 5, 1989.
6 (Ex. F.) Defendant obtained these dismissals at considerable
7 expense, for the benefit of all named defendants, including
8 Vicki Aznaran.

9 Vicki Aznaran has testified that this indemnification was
10 important to her:

11 Q. One of the things is in this release ... is an
12 agreement by the Church to indemnify you ... That
13 was a matter of some importance to you to have
14 that protection, wasn't it?

15 A. It seems that I discussed that.

16 Q. As a matter of fact, you knew that you had been
17 named as a defendant in the FAIR suit?

18 A. Yes.

19 Q. But that you hadn't been served yet and if you
20 were' served, you certainly wanted to be defended
21 and didn't want to be exposed to liability?

22 A. That's right.

23 (Ex. G. at pp. 1119-1120.)

24 In addition, the conduct of both the Aznarans amply
25 demonstrates that the indemnification arrangement was important
26 to them. As they were leaving the Church, they both expressed
27 concerns that they would be represented by counsel, should they
28 ever be named as defendants either individually or along with

1 any other Church of Scientology in any legal proceedings.

2 (Declaration of Mark C. Rathbun at paras. 3, 8; Ex. H,
3 Declaration of Lawrence E. Heller at para 4.) They both
4 expressed the desire that the Church arrange for Vicki's
5 representation in the on-going case of Stansfield v.
6 Starkey, pending in the Los Angeles Superior Court.

7 (Declaration of Mark C. Rathbun at para 3; Declaration of
8 Lawrence E. Heller at para 4.)^{2/} Vicki Aznaran stayed in
9 contact with the President of the Religious Technology Center
10 to discuss the lawsuit, as a part of the Church's
11 implementation of its promise to indemnify her. (Declaration
12 of Mark C. Rathbun at paras. 5, 8.)

13 The Aznarans will undoubtedly attempt to claim that the
14 releases are invalid because they were allegedly signed while
15 the Aznarans were under the effect of so-called "brainwashing"
16 and that they somehow, "woke up" from this "brainwashing" and
17 filed suit as a result of the harm they realized they suffered.
18 Aside from this position being contrary to law (See, Section
19 I, A, 2 infra), this position is completely contradicted by
20 the facts in this case.

21 The facts are that in late 1987, the Aznarans became upset
22 only after they were refused permission to deliver Scientology
23 services for compensation to a Dallas area parishioner without
24 first completing the steps required to be taken by Church

25 2. Numerous other benefits were offered to the Aznarans and
26 accepted by them as part of their leaving of the Church. The
27 President of the Religious Technology Center assisted the
28 Aznarans in establishing a private investigator's business in
Texas and arranged for the sale of the Aznarans' horse.
(Declaration of Mark C. Rathbun at paras. 4, 6, 9.)

1 policy for the Aznarans to become active Church members. This
2 disagreement was exacerbated by former Church counsel, Joseph
3 Yanny, in early 1988 when he sought the Aznarans' assistance
4 in his attempt to extort money from the Church. (Declaration
5 of Mark C. Rathbun at paras. 10 - 15, 17.)

6 Thus, it is clear that the idea to sue the Church only
7 came about through contacts with Joseph Yanny, a disgruntled
8 former Church counsel. The Aznarans' claims of "duress" and
9 "brainwashing" are a sham. The only duress present between the
10 Aznarans and the Church were the extortionate threats made by
11 the Aznarans.

12 Plaintiffs have at no time rescinded their releases of
13 defendants. Plaintiffs never offered to restore the
14 consideration they received. Instead, plaintiffs continue to
15 accept and enjoy the benefits of their bargain with defendants,
16 while flagrantly violating their obligations under the
17 agreement.

18 B. Plaintiffs' Violations of the Release Agreements

19 Plaintiffs have repeatedly and flagrantly violated the
20 release agreements. First, they commenced this lawsuit, in
21 violation of the covenant not to sue. Second, they blatantly
22 ~~disregarded their promises not to divulge information about~~
23 ~~their experiences while members and staff of the Church of~~
24 ~~Scientology and not to cooperate or appear voluntarily in other~~
25 ~~proceeding against the Church.~~

26 Plaintiffs met several times with Joseph Yanny, a former
27 attorney for the Church who is now in litigation with the
28 Church over his improper billings of the Church and his

1 breaches of his fiduciary and attorney-client relationship with
2 the Church. (Declaration of Kendrick Moxon at paras. 5, 6.)

3 These meetings occurred between March 18, 1988 to March 31,
4 1988. Plaintiffs discussed with Yanny this lawsuit, the nature
5 of their claims, their statute of limitations, problems and
6 other issues. They also discussed strategy with Yanny, and
7 each provided the other with what they knew about defendants'
8 approaches to litigation and how to exploit what they perceived
9 as weaknesses in these approaches. These breaches of
10 obligations to defendants by the Aznarans were designed to
11 assist Yanny in his litigation against the Church and Yanny's
12 breaches of his attorney-client obligations to defendants were
13 designed to assist the Aznarans in the instant action.

14 (Declaration of Kendrick Moxon at para. 6.)

15 In June of 1988, plaintiffs again breached their agreement
16 to maintain confidentiality by meeting for over eight hours
17 with two Los Angeles Times reporters and discussing their
18 experiences with various of the defendants, including the
19 Religious Technology Center, both real and imagined. (See
20 Declaration of Kendrick Moxon, Exhibit G thereto; Depo. of
21 Vicki Aznaran at 48-59, 55; Ex. I, Depo. of Richard Aznaran
22 at 222-23.)^{3/}

23 The Aznarans also called and met with Bent Corydon,

24 3. The Aznarans' meeting with the Los Angeles Times was a
25 result of a threat made by Joseph Yanny against defendants.
26 Yanny threatened defendants that, if they did not drop their
27 lawsuit against him, he would himself go to the LA Times. When
28 defendants proceeded with their litigation against Yanny for his
breaches of his fiduciary duty, Yanny, who had been working
closely with the Aznarans, sent the Aznarans instead.
(Declaration of Mark C. Rathbun at para. 17.)

1 another litigant against the Church, and discussed with him
2 their version of experiences with the Religious Technology
3 Center and other Church entities. These discussions occurred
4 during the time that Corydon was involved in litigation
5 against RTC and others. Vicki Aznaran has also voluntarily
6 authored various declarations and affidavits (5 in total) for
7 use in that Corydon lawsuit and in another lawsuit brought by
8 Corydon against various Churches of Scientology. The most
9 recent affidavit was executed on September 29, 1989.

10 (Declaration of Kendrick Moxon at paras. 8, 9, 10.)

11 In another case as well, RTC v. Robin Scott/Larry
12 Wollersheim, Case Nos. CV 85-711 JMI 85-7197 JMI, Vicki
13 Aznaran voluntarily met with parties in litigation against the
14 Church in June 1988 and, in October, 1988, voluntarily filed a
15 declaration which contained statements and allegations in
16 violation of her release agreement with defendants herein. In
17 this declaration, Vicki Aznaran described the chronology of her
18 purported experiences while a member and staff member of
19 different Churches of Scientology. (Declaration of Kendrick
20 Moxon at para. 11.)

21 These breaches of the release agreements have caused
22 irreparable harm to defendants. In addition to forcing
23 defendants to expend enormous resources in defending this
24 action, defendants are injured by the disclosure of information
25 plaintiffs learned while they were in a fiduciary relationship
26 to defendants, including material protected by the

27 ///

28 ///

1 attorney-client privilege.^{4/} All of these disclosures were
2 blatantly violative of the release agreements.

3 ARGUMENT

4 I.

5 DEFENDANTS ARE ENTITLED

6 TO A PRELIMINARY INJUNCTION

7 In this Circuit, a preliminary injunction is available to a
8 party who demonstrates either:

9 (1) a combination for probable success and the
10 possibility of irreparable harm, or (2) that
11 serious questions are raised and the balance of
12 hardships tips in its favor. 'These two
13 formulations represent two points on a sliding
14 scale in which the required degree of irreparable
15 harm increases as the probability of success
16 decreases.'

17 4. From about 1972 to 1987, Vicki Aznaran was a member of the
18 staff of one or another Church of Scientology. Ex. G,
19 Deposition of Vicki Aznaran at 340-41, 979. In or about 1978,
Vicki Aznaran joined the Sea Org, a fraternal and
ecclesiastical organization within the religion.

20 Vicki rose in responsibility during her tenure with the
21 Church and her membership in the Sea Organization, until in May
22 of 1985 she assumed the responsibilities of Inspector General
23 of the Religious Technology Center ("RTC"). Ex. G at p. 1003.
24 This position was one of the highest ecclesiastical positions
in the religion, as the RTC was responsible for preserving the
integrity of the religious practices of the organized churches
of Scientology in accordance with the scriptural works of the
Founder of the religion. (Ex. G at p. 218-220.)

25 Vicki Aznaran has testified that, as the head of RTC, Vicki
26 had overall responsibility for all the legal affairs of RTC.
27 Vicki had the final approval on pleadings and papers filed in
RTC litigation, and regularly worked with RTC attorneys on both
28 litigation and non-litigation matters. (Exhibit J, Vicki
Aznaran Declaration, August 9, 1988, paras. 3, 8.)

1 Arcamuzi v. Continental Air Lines, 819 F. 2d 935, 937 (9th
2 Cir. 1987), quoting from Oakland Tribune, Inc., v.
3 Chronical Publishing Co., 762 F.2d 1374, 1376 (9th Cir.
4 1985).

5 Under either of the standards articulated above,
6 defendants are entitled to a preliminary injunction.
7 Defendants have raised more than serious questions about
8 whether the release and waiver agreements bar the Aznarans from
9 prosecuting this lawsuit and from violating the confidentiality
10 and non-disclosure provisions of their agreements with
11 defendants. Indeed, defendants' showing on the merits meets
12 the probable success prong of the standard.

13 Further it is indisputable that defendants have been
14 harmed by plaintiffs' violations of the agreements and, in the
15 absence of preliminary injunctive relief, that defendants will
16 suffer further irreparable harm. Plaintiffs, by contrast, will
17 suffer no harm from any delay occasioned by a determination of
18 the enforceability of the releases prior to any further
19 litigation of the merits of the case.

20 A. Defendants Are Likely to Succeed

21 In Demonstrating That The Release

22 And Waiver Agreements Are Enforceable

23 Plaintiffs received valuable consideration in exchange for
24 their waivers of potential claims and their agreements to
25 maintain confidentiality. The agreements were entered into
26 knowingly and willingly by plaintiffs, or at most, were
27 voidable and have been repeatedly ratified by plaintiffs'
28 conduct. These agreements on their face prohibit plaintiffs

1 from prosecuting the claims set forth in their complaint, and
2 from disclosing information and volunteering as witnesses in
3 other litigation against defendants.

4 1. The Releases are Valid and Enforceable

5 The Releases signed by plaintiffs are valid and
6 enforceable under California law. Since the Releases are in
7 writing, they are valid even absent consideration. See
8 Cal.Civil Code § 1541 ("An obligation is extinguished by a
9 release therefrom given to the debtor by the creditor, upon a
10 new consideration, or in writing, with or without new
11 consideration"). See also Tenzer v. Superscope, 39
12 Cal.3d 18, 31 n. 7, 216 Cal.Rptr. 130, 137 n.7 (1985)
13 ("Civil Code Section 1541 permits the extinction of an
14 obligation, unsupported by considerations, provided that the
15 release is in writing").

16 Moreover, the plaintiffs received consideration for
17 executing the Releases. Defendants promised to indemnify
18 plaintiffs against claims based on plaintiffs' association
19 with the Church of Scientology. (Ex. A at para. 2.) This
20 promise was particularly valuable to Vicki Aznaran, since at
21 the time the Releases were executed, Vicki Aznaran had been
22 named as a defendant in a lawsuit that had been brought against
23 the Church of Scientology. See pp. 4 and 6 supra. Richard
24 Aznaran was paid \$1,040.90 as full settlement for personal
25 property belonging to Richard Aznaran which had been destroyed
26 in a fire and \$387.37 in wages owed to Richard Aznaran. (Ex.
27 C at paras. C and D.) And, as noted above, defendants also
28 gave plaintiffs a loan of \$20,000 on extremely favorable

terms.^{5/}

Finally, it should be noted that the two identical Releases (Exhibits A and B) are mutual. Defendants released the Aznarans from any and all claims "of every kind and nature, known or unknown, for or because of any act or omission allegedly done by plaintiffs from the beginning of time to and including the date of execution." (Ex. A at para. 4; Ex. B at para. 4.) As the former president of RTC, removed from her position because of her misfeasance in office, Vicki had substantial potential liability. The mutuality of the Releases thus conferred substantial benefit and consideration to plaintiffs.

2. At Most, The Releases Were Voidable;

Since Plaintiffs Have Repeatedly Ratified
The Releases, They Are Enforceable

Defendants submit that plaintiffs signed the releases completely free of any sort of coercion, undue influence, duress or mistake. See Defendants' May 8, 1989 Reply Memorandum In Support of Motion for Summary Judgment at pages 15-36. In its

5. Although the Releases signed by plaintiffs do not recite the twenty thousand dollar (\$20,000) loan as part of the consideration for the Releases, the Loan Agreement and the Releases were signed contemporaneously. Moreover, both the loan agreement and the Releases concerned the same subject matters: the documents were to terminate the connections between the plaintiffs and the Church of Scientology. California Civil Code § 1642 states that agreements "relating to the same subject matter and executed as parts of substantially one transaction are to be construed together as one contract." Huckell v. Matranga, 99 Cal.App.3d 471, 481, 160 Cal.Rptr. 177, 183 (1979) (citations omitted). Accord, IMO Development Corp. v. Dow Corning, 135 Cal.App.3d 451, 463, 185 Cal.Rptr. 341, 348 (1982). Thus, the Loan Agreement and the Releases must be read as one contract, and the loan is clearly consideration for plaintiffs' Releases.

May 25, 1989 Order Denying Defendants' Motion for Summary Judgment, this Court decided that there are issues of fact as to whether plaintiffs consented to the release and waiver agreements. Defendants respectfully disagree and submit that, at most, the Releases were voidable, not absolutely void. Cal.Civ.Code §§ 1566, 1567.^{6/} This distinction means that the allegedly wronged party must act in a timely and affirmative manner to rescind a voidable contract. The allegedly wronged party can also ratify a voidable contract by his or her subsequent conduct, as plaintiffs have done in this case. Cal.Civ. Code § 1588. However, the point to determine these questions is now, in the context of a full evidentiary hearing, prior to continuing any further in this case.

Only in rare situations where fraud or duress goes to the inception or execution of the agreement, so that the promisor is deceived as to the very nature of his act, and actually does not intend to enter into a contract at all, is the contract void. 1 Witkin, Summary of California Law (Ninth Ed.) Contracts §§ 405, 417 (1987). Thus, for example, in Meyer v. Haas,

6. Cal. Civ. Code § 1586 states:

A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the Chapter on Rescission.

Section 1567 states:

An apparent consent is not real or free when obtained through:

9. Duress
10. Menace
11. Fraud
12. Undue influence; or
13. Mistake

1 126 Cal. 560, 583, 58 P. 1042 (1899), plaintiff who could not
2 read English, signed a release relying on the representation of
3 his agent, who also acted as agent for the adverse party, that
4 the instrument actually was a receipt. The court held the
5 release void.^{7/}

6 As this Restatement analysis shows, plaintiffs' Releases
7 were, at most, voidable and not absolutely void.

8 Plaintiffs here were quite well aware of the nature of the
9 documents they were signing. In his deposition, Richard
10 Aznaran testified that he knew he was signing a release in
11 favor of the Church. Plaintiffs' Exhibit C in Opposition to
12 Summary Judgment ("Pl. Ex. C") at 154, 190. He further

13 7. The Restatement of Contracts (Second) §§ 174-175 makes
14 this distinction clear. Section 174 provides:

15 If conduct that appears to be a manifestation of
16 assent by a party who does not intend to engage in
17 that conduct is physically compelled by duress,
the conduct is not effective as a manifestation of
assent.

18 The Restatement gives the following example of this
19 "relatively rare situation": B refuses to sign a contract. A
20 grabs B's hand and compels B by physical force to write his
name. B's signature is not effective as a manifestation of his
assent, and there is no contract. Plaintiffs do not allege any
facts showing that this sort of force or duress occurred here.

21 Restatement § 175(1) describes the sort of duress that
22 renders a contract voidable:

23 If a party's manifestation of assent is induced by
24 an improper threat by the other party that leaves
the victim no reasonable alternative, the contract
is voidable by the victim.

25 Comment b to § 175(1) states that, to render a contract
26 voidable, there must have been threats which "arouse such fear
27 as precludes a party from exercising free will and judgment or
that [are] such as would induce assent on the part of a brave or
28 a man of ordinary firmness."

1 testified, "I can recall signing a release which contained many
2 of these same type of provisions: although he alleges that he
3 does not recall the exact provisions of the release he signed.
4 Id. at 58. Vicki Aznaran testified, "I signed a whole stack
5 of documents the day I left that I did not thoroughly read" but
6 that there was a release which she "skimmed over." (Pl. Ex. D
7 at 483-87.) She testified that she was completely aware she was
8 signing a release but that she "didn't pay a whole lot of
9 attention to that release." Id. at 898-99. Thus, there is
10 no dispute that both plaintiffs were entirely conscious of the
11 fact that they were signing releases in which they promised not
12 to sue the Church and to maintain confidentiality.^{8/}

13 Plaintiffs were completely aware of the nature of their
14 agreements and fully understood them. Vicki, for example,
15 became employed at a law firm in Dallas shortly after her

16
17 8. Plaintiffs further testified that they both were
18 sophisticated in legal matters and familiar with releases.
19 Richard Aznaran testified that he was familiar with mutual
20 release agreements. He previously had seen the same type of
21 release agreement he signed, and had read and discussed releases
22 generally with others before he signed his release of
23 defendants. Ex. I at 132-133. Vicki Aznaran testified that,
24 while a member of Scientology, she had significant experience
25 with defendants' legal affairs:

26 As president of RTC ... I attended many meetings
27 concerning the numerous legal actions involving
28 Scientology. During this time period, I had
personal access to all legal documents having to
do with RTC. I received a report every day on
my computer that included a synopsis of each
ongoing legal case involving Scientology. I
received, or so I was told, copies of every major
motion filed in cases involving Scientology. I
was on the "approval lines" for legal documents
dealing with RTC.

Ex. J at paras. 8-10.

1 departure from the Church in California. (Declaration of William
2 Neil at para 3.) She was extremely competent legally, and at
3 least one partner in the firm consistently relied upon her
4 expertise in competently handling legal matters. (Declaration of
5 William Neil at para 4.) Thus, at most, the releases were
6 voidable and not absolutely void.

7 Plaintiffs have never even alleged that they have
8 rescinded or restored the consideration. (Declaration of Mark
9 C. Rathbun at para. 16.) Instead, they have ratified the
10 releases. As a matter of law, plaintiffs' continued acceptance
11 and enjoyment of the benefits of the transaction, well beyond
12 the time they left the Church and beyond the time they claim to
13 have been under the Church's influence, as a matter of law
14 constitutes consent to and ratification of all obligations of
15 the transactions, including the releases. Cal.Civ. Code §
16 1589.

17 The test of ratification by conduct is whether the
18 allegedly wronged party, with knowledge of the material facts
19 entitling him to rescind, engaged in unequivocal conduct giving
20 rise to the inference that he or she intended to ratify. The
21 undisputed actions of plaintiffs here as a matter of law more
22 than constitute ratification by conduct. E.g., Union
23 Pacific R. Co. v. Zimmer, 87 Cal.App.2d 524, 197 P.2d
24 363, 368 (1948). Plaintiffs have retained and used the
25 proceeds of a \$20,000 loan which was part of their settlement
26 of all potential claims with the Church. They received the
27 benefits of defendants' indemnification agreement in two
28 multi-million dollar lawsuits. This conduct alone has been

1 held sufficient to constitute ratification. Id.

2 Plaintiffs are attempting to "have it both ways." They
3 retain the consideration they received from the Church's attempt
4 to avoid the effect of their releases of the Church. California
5 courts have rejected this type of self-serving approach:

6 [I]t is axiomatic that in such an instance the
7 entitled party must rescind the entire contract
8 and may not retain the rights under it which he
9 deems desirable and repudiate the remainder. The
10 rationale underlying the rule is that retention of
11 only the benefits constitutes unjust enrichment
12 and binds the parties to terms not contemplated
13 within the agreement.

14 IMO Development Corp. v. Down Corning, 135 Cal.App.3d at
15 458, 185 Cal.Rptr. at 345 (citations omitted). Under
16 California law, a settlement agreement may not be rescinded
17 partially. E.g., Larsen v. Johannes, 7 Cal.App.3d 491,
18 503, 86 Cal.Rptr. 744, 751 (1970). Plaintiffs never
19 rescinded their settlement agreement with the Church, have not
20 restored the benefits they received, and instead have ratified
21 the releases.

22 3. The Releases Bar Plaintiffs From
23 Discussing Their Experiences
24 With the Church And From
25 Volunteering To Be Witnesses
26 Against The Church

27 A release, like any other contract, is to be interpreted
28 according to its terms. Yeng Sue Chow v. Levi Strauss & Co.,

1 49 Cal.App.3d 315, 328 122 Cal.Rptr. 816, 823-24 (1975);
 2 Hofland v. Gustafson, 132 Cal.App.2d 907, 909, 282 P.2d 1039
 3 (1955). If the terms are clear, they are to be given effect.
 4 Yeng Sue Chow v. Levi Strauss & Co., supra; Brae
 5 Transportation Inc. v. Coopers & Lybrand, 790 F.2d 1439,
 6 1443 (9th Cir. 1986) (applying California law).

7 The Releases here plainly state that plaintiffs will
 8 maintain "strict confidentiality ... with respect to [their]
 9 experiences with the Church of Scientology and any knowledge or
 10 information [they] may have concerning the Church of
 11 Scientology. ..." (Ex. A at para. 6C; Ex. B at para. 6C.)
 12 The Releases also explicitly bar plaintiffs from "voluntarily
 13 assist[ing] or cooperat[ing] ... in any proceeding against any
 14 of the Scientology organizations," (Ex. A at para. 6E; Ex. B
 15 at para. 6E), and from "testify[ing] or otherwise
 16 participat[ing] in any ... judicial proceeding adverse to
 17 Scientology ... unless compelled to do so by lawful subpoena or
 18 other lawful process." (Ex. A at para. 6F; Ex. B at 6F.)
 19 These promises, which are completely standard settlement
 20 provisions and entirely enforceable, have been utterly ignored
 21 by plaintiffs. See pp. 8 to 12, supra.

22 4. The Releases Bar Plaintiffs From
 23 Prosecuting This Lawsuit

24 The Releases signed by plaintiffs clearly and explicitly
 25 state the plaintiffs "release, acquit and forever discharge ...
 26 any and all claims, demands, damages, actions and causes of
 27 action of every kind and nature, known or unknown, from the
 28 beginning of time until the date hereof." (Exhibit A at para. 3;

1 Exhibit B at para. 3.) See also Exhibit C at para. 1. By
2 their terms, therefore, the Releases bar all the claims asserted
3 by plaintiffs insofar as they arise out of acts occurring before
4 the signing of the Releases. The terms of the Releases bar
5 plaintiffs' tort claims as well as their contract claims.

6 See, e.g., Brae Transp. v. Coopers & Lybrand, supra
7 (breach of stock purchase agreement); Donnelly v. Ayer, 183
8 Cal.App.3d 978, 228 Cal.Rptr. 764 (1986) (attorney
9 malpractice).

10 The Releases signed by plaintiffs bar all of the instant
11 claims, known or unknown. Where, as in the instant case, a
12 releasor also knows or suspects that he has suffered some harm
13 but he nevertheless signs a full release, the releasor is bound
14 by the terms of the release. See Cohn v. Bugas, 42
15 Cal.App.3d 381, 116 Cal.Rptr. 810 (1974); Grebe v. McDaniel,
16 265 Cal.App.2d 901, 71 Cal.Rptr. 662 (1968); Commercial Ins.
17 Co. of Newark, New Jersey v. Copeland, 248 Cal.App.2d 561, 56
18 Cal.Rptr. 794 (1967).

19 The plaintiff in Cohn v. Bugas, supra, had been injured
20 in a car accident and had subsequently executed a release. At
21 the time the release was executed, plaintiff knew she had a
22 cervical sprain. A year later, she suffered a cervical fusion
23 arising from the accident, and she attempted to bring suit. The
24 court held that, because plaintiff knew she had suffered some
25 back problems at the time she signed the release, the release
26 barred her suit. 42 Cal.App.3d at 391, 116 Cal.Rptr. at 817.

27 The plaintiff in Grebe v. McDaniel, supra, was also
28 injured in an automobile accident. At the time she executed her

1 release, she was aware of pain in her neck and back. She
2 claimed to be unaware of the full seriousness of the injuries,
3 however, and brought suit. The court held that the release
4 barred her suit. The court stated:

5 Here plaintiff knew, at time of release, of the
6 general nature and location of her injury and of
7 continuing effects from it. Her lack of detailed
8 knowledge of the medical terminology applying to
9 it, and of the specific treatment required, is not
10 enough to limit the bar of the release.

11 71 Cal.Rptr. at 663.

12 In Commercial Ins. Co. v. Copeland, the plaintiff
13 suffered back pains about a month after a car accident. Despite
14 her suspicions that the car accident was the cause, she
15 nevertheless signed a release. The court held that the release
16 barred any possible cause of action for the back pain because of
17 her mere suspicion that the back pain may have been caused by
18 the accident. 56 Cal.Rptr. at 798.

19 Plaintiffs' own testimony in this case demonstrates that at
20 the time they signed the Releases, they knew of each of the
21 claims which are the basis for the instant suit. The first
22 claim is that Vicki Aznaran was falsely imprisoned during the
23 time she was at Happy Valley. If she had been imprisoned,
24 surely she would have been aware of it. Vicki Aznaran testified
25 of her contemporaneous knowledge of specific alleged events
26 concerning this purported false imprisonment. Indeed, Ms.
27 Aznaran registered complaints to Church staff concerning the
28 conditions at Happy Valley at the time, prior to signing the

1 Releases. Richard Aznaran also testified that he was extremely
2 upset in February of 1987 when he learned that Vicki was at
3 Happy Valley. (Exhibit I at 395-96.)

4 Plaintiffs' second and third claims are for alleged
5 infliction of emotional distress. According to the complaint,
6 plaintiffs suffered such alleged distress prior to the execution
7 of the Releases and with knowledge of the cause of such
8 distress. Ms. Aznaran testified that her auditing from the
9 Church allegedly caused her "psychological trauma or distress"
10 in 1976 and that she attributed two weeks of sickness to this
11 "trauma" at that time. Ms. Aznaran also testified as to a
12 number of persons with whom she discussed her alleged "trauma"
13 in the years 1976-1981, including her husband Richard.

14 Similarly, if plaintiffs' allegations are taken at face
15 value, the plaintiffs' fourth claim for loss of consortium must
16 be barred by the Releases, as the alleged loss occurred prior
17 to the time plaintiffs signed the Releases. Vicki Aznaran has
18 testified that after April 1, 1987, she and her husband could
19 and did engage in sexual relations whenever they chose. Ms.
20 Aznaran also testified that at the time that Richard was posted
21 in San Luis Obispo in January 1986, that he was very upset
22 because it meant that they would be separated. Vicki also
23 testified that in the fall of 1986 she complained and discussed
24 with another staff member that she considered resigning from her
25 position as Inspector General because she was separated from
26 her husband too long. Thus, when the Releases were signed, the
27 plaintiffs were aware of any such alleged loss of consortium.
28 Thus, this claim is barred.

1 The fifth cause of action is for civil conspiracy, based on
2 the actions which allegedly gave rise to the first four causes
3 of action. As discussed above, plaintiffs were aware of the
4 harm allegedly caused by these actions prior to the signing of
5 the Releases, and this claim is barred.

6 The sixth cause of action for fraud is again based entirely
7 on alleged harms arising out of Scientology practices of which
8 the plaintiffs were well aware prior to the day on which they
9 signed the Releases. Richard Aznaran testified that when he was
10 on staff he believed that the Church's goals were merely to make
11 money -- not to provide spiritual services to its parishioners.
12 Richard also testified that he never believed in the goals of
13 the Sea Organization. When plaintiffs signed the Releases,
14 therefore, their purported fraud claim was fully known to them.
15 Indeed, if there is any fraud, it was perpetrated by
16 plaintiffs.

17 The Complaint's Seventh Cause of Action for breach of
18 contract alleges that defendants had promised to provide
19 "spiritual or psychological services" but did not provide such
20 services. Vicki Aznaran testified that she told a number of
21 persons in 1977 that her auditing and auditor training had
22 caused her "psychological trauma" and had exercised "undue
23 influence" over her. Plaintiffs obviously knew whether they
24 were provided such services at the time they signed the
25 Releases. Even if plaintiffs were arguably oblivious to this
26 claim when they signed the Releases, the Releases would still
27 bar the prosecution of this claim. Indeed, the California
28 courts have ruled a general release encompasses all contract

1 claims, known or unknown. Larsen v. Johannes, 7 Cal.App.3d
2 491, 504-506, 86 Cal.Rptr. 744, 751-753 (1970).

3 In the eighth cause of action for restitution, plaintiffs
4 claim to be dissatisfied and seek a refund for the purported
5 cost of all Scientology services for 15 years. As noted in the
6 preceding paragraph, Ms. Aznaran expressed dissatisfaction with
7 her auditing as long as 10 years ago. Obviously, plaintiffs
8 must have been aware of their alleged dissatisfaction prior to
9 signing the Releases.

10 Plaintiffs' ninth cause of action concerns alleged
11 invasion of Vicki Aznaran's privacy. The only harm alleged in
12 the complaint was for the emotional pain allegedly suffered by
13 Vicki Aznaran when she acknowledges that she learned of the
14 so-called "invasions of privacy" which occurred prior to her
15 signing a Release. Complaint at paras. 72-74. Clearly,
16 therefore, the Releases bar prosecution of this claim by virtue
17 of admissions on the face of the complaint.

18 The tenth cause of action, alleging non-payment of minimum
19 wages and overtime, again relates to actions done prior to the
20 signing of the Releases. Ms. Aznaran testified that she was
21 aware of the low pay on staff a year before she ever joined
22 Church staff. See para. 19 of the Complaint. Moreover, the
23 separate Release signed by Richard Aznaran specifically
24 concerns, among other things, wages paid to Richard. (Ex. C at
25 para. D.)

26 The eleventh cause of action for constructive fraud
27 basically reiterates the fraud claim discussed above, but adds
28 that the allegedly fraudulent statements induced plaintiffs to

1 enter a fiduciary relationship with defendants. For the same
2 reasons that the fraud claim is barred by the Releases, the
3 constructive fraud claim is barred by the Releases.

4 5. A Preliminary Injunction Is Appropriate
5 To Compel Compliance With An Agreement

6 A preliminary injunction is properly granted to compel
7 compliance with an agreement. TNT Marketing, Inc. v.
8 Agresti, 796 F.2d 276, 278 (9th Cir. 1986). In Federal
9 Leasing Inc. v. Underwriters at Lloyds, 650 F.2d 495, 496
10 (4th Cir. 1981), the Fourth Circuit held that it was proper
11 for the lower court to enter a preliminary injunction
12 requiring the parties to comply with an entered settlement
13 agreement. Indeed, courts routinely enter preliminary
14 injunctions where there has been a breach or threatened breach
15 of contract. Mississippi Power & Light Co. v. United Gas
16 Pipe Line Co., 760 F.2d 618 (5th Cir. 1985); Yeargin
17 Construction Company, Inc. v. Parsons & Whittemore
18 Alabama Machinery & Service Corp., 609 F.2d 829 (5th Cir.
19 1980); Central Illinois Public Service Company v.
20 Consolidated Coal Company, 527 F.Supp. 58 (C.D. Illinois
21 1981), aff'd, 673 F.2d 1333 (7th Cir. 1981); Philipp
22 Brothers Division of Engelhard Minerals & Chemicals v. El
23 Salto, S.A., 487 F.Supp. 91 (S.D.N.Y. 1980); Collins &
24 Company, General Contractors, Inc. v. Claytor, 476
25 F.Supp. 407 (N.D. Ga. 1979).

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1 B. Defendants Will Suffer Irreparable
2 Harm Unless A Preliminary Injunction
3 Is Issued

4 The mutual releases between plaintiffs and defendants gave
5 three principal benefits to defendants. First, plaintiffs
6 waived any potential claims against defendants and promised not
7 to sue defendants. (Ex. A at para. 3, 4; Ex. B at paras.
8 3, 4.) Second, plaintiffs promised to maintain confidentiality
9 and to refrain from revealing ecclesiastic secrets, or
10 otherwise discussing their experiences while they were members
11 and officers of the Church. (Ex. A at 6C; Ex. B at para.
12 6C.) Third, plaintiffs agreed that they would not voluntarily
13 testify or otherwise participate in judicial proceedings
14 against the Church or assist anyone in litigation against the
15 Church unless compelled to do so by lawful process. (Ex. A
16 at paras. 6F, 8; Ex. B at para. 6F, 8.)

17 All three of these provisions have been violated, causing
18 irreparable injury to defendants. Plaintiffs' bringing of this
19 lawsuit has caused defendants to expend enormous time and
20 financial resources defending a burdensome lawsuit. Moreover,
21 given the Aznarans' declarations about their inability to
22 finance their own litigation other than by offering a
23 contingency fee, it will be impossible for defendants ever to
24 recover from plaintiffs the costs of defending. Thus, the
25 substantial burden and cost to defendants will never be
26 recovered. The only opportunity for effective relief for this
27 injury is in the present, because, as the Aznarans have
28 testified, they have no funds which could be used to satisfy a

1 damage judgment against them. This injury obviously is
2 irreparable.

3 In addition to bringing this lawsuit, plaintiffs have
4 assisted several others in suing the Church. As discussed in
5 the declaration of Kendrick L. Moxon, plaintiffs on numerous
6 occasions have filed declarations and affidavits in support of
7 other plaintiffs who are litigating against the Church. (Moxon
8 Declaration at paras. 9-11.) In each case, plaintiffs did so
9 voluntarily, without any subpoena or other lawful process.
10 Id. Plaintiffs have also helped others who have contemplated
11 suing the Church, giving them information and advice about
12 strategy. (Moxon Declaration at para. 3.) Finally, in flagrant
13 disregard of their agreement, plaintiffs spent over ten hours in
14 taped interviews with the Los Angeles Times, in a deliberate
15 attempt to harm the Church, done as part of the carrying out of
16 a threat by Joseph Yanny. See note 4, supra. The
17 injury to defendants from these repeated, deliberate violations
18 of the Releases is obvious. Defendants are forced to suffer
19 the negative effects resulting from, for example, disclosures
20 to the Los Angeles Times, with the attendant potential loss
21 of good will toward the Church and adverse impacts on the
22 Church's relationships with its members. Such injury is
23 incalculable and irreparable.

24 Moreover, the irreparable harm which defendants would
25 suffer from being forced to litigate the merits of this action
26 -- even if defendants ultimately prevail on the release issue
27 after plenary trial -- goes far beyond the high financial loss
28 and burden, however.

1 This case involves complex ecclesiastical issues, going to
2 the truth or falsity of defendants' religious beliefs and
3 practices. Much of the case is clearly non-justiciable under
4 the First Amendment. See Defendants' Memorandum and Reply
5 Memorandum in Support of Motion to Dismiss.

6 Litigation of such issues as religiosity, the truth or
7 falsity of religious doctrine, and the propriety of peaceful and
8 voluntary religious practices would constitute a highly
9 intrusive entanglement of the Court in ecclesiastical matters.
10 Such entangling is itself constitutionally suspect and
11 potentially violative of defendants' First Amendment rights.
12 Walz v. Tax Commission, 397 U.S. 664, 675, 90 S.Ct. 1409
13 (1970); Lemon v. Kurtzman, 403 U.S. 602, 620, 624-35, 91
14 S.Ct. 2125 (1971). As Chief Justice Burger wrote, "[i]t is
15 not only the conclusions that may be reached ... which may
16 impinge on rights guaranteed by the Religious Clauses, but
17 also the very process of inquiry leading to finding and
18 conclusions." NLRB v. Catholic Bishop of Chicago, 440
19 U.S. 490, 502, 99 S.Ct. 1313 (1979). See also Surinach
20 v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979).

21 It was, in major part, to avoid the potential for such an
22 entangling inquiry that the defendants entered into the release
23 agreements. Failure to enforce them as a threshold matter
24 will cause the defendants irreparable harm. The Court will
25 have permitted trial of the very practices and beliefs of
26 defendants. At that point, even if the defendants were to
27 prevail at trial, it will be impossible to "unring the bell" of
28 improper disclosure, Maness v. Meyers, 419 U.S. 449, 460,

1 95 S.Ct. 585 (1975) (Burger, J.), too late to prevent the
2 invasion of the privacy of the religious believes and
3 practices of all Scientologists,^{9/} too late to prevent the
4 chilling effect upon religious practice by members and upon
5 religious proselytizing in which the Church is entitled to
6 engage,^{10/} too late to prevent the chilling effect upon

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24 9. Cf. Buckley v. Valeo, 424 U.S. 1, 64, 96 S.Ct. 612
25 (1976) ("disclosure, in itself, can seriously infringe on
privacy of association and belief guaranteed by the First
Amendment").

26 10. See Watkins v. United States, 354 U.S. 178, 197, 77
27 S.Ct. 1173 (1957) (when "revelations concern matters that are
28 unorthodox, unpopular, or even hateful to the general public,
the reaction in the life of the witness may be disastrous").

1 religious practice by members and upon religious proselytizing
2 in which the Church is entitled to engage,^{11/} and too late
3 to prevent the improper and inexcusable breach in the "wall of
4 separation" between church and state^{12/} which this Court
5 is required to protect.

6 C. The Balance Of Equities Tips Decidedly
7 In Favor Of Granting A Preliminary
8 Injunction

9 Compared to the significant irreparable harm that
10 defendants will suffer in the absence of a preliminary
11 injunction, the only harm plaintiffs will even arguably suffer
12 by the issuance of such an order would be temporary delay in the
13 prosecution of their lawsuit until the Court finally determines
14 whether the release agreements bar plaintiffs from prosecuting
15 their claims and from violating the confidentiality provisions.
16 If the Court ultimately holds that the releases do bar the
17 claims, plaintiffs will have suffered no harm at all. In the
18 unlikely event that the Court finds that the agreements do not
19 apply to plaintiffs' claims or that they are not effective,
20 plaintiffs will soon be free to prosecute their claims. It is
21 hard to conceive of such minor delay as causing a substantial
22 harm to plaintiffs at all. It certainly pales in comparison to
23 the irreparable harm which has occurred and will occur to

24 11. See Cantwell v. Connecticut, 310 U.S. 296, 60
25 S.Ct. 900 (1940).

26 12. Everson v. Board of Education, 330 U.S. 1, 16 (1947).
27 Such an "entanglement" between the affairs of church and state
28 is "an independent evil against which the Religious Clauses
were intended to protect." Lemon v. Kurtzman, 403 U.S. 602,
624-25, 67 S.Ct. 504 (1971).

1 defendants in the absence of a preliminary injunction. The
2 balance of hardships therefore tips decidedly in favor of
3 granting the injunction.

4 CONCLUSION

5 Wherefore, for the reasons given above, defendants
6 respectfully request that this Court:

7 (1) Enter an order preliminarily enjoining plaintiffs
8 during the pendency of this case from disseminating any
9 confidences of defendants or information concerning their
10 experiences with defendants outside of the papers or proceedings
11 of this lawsuit;

12 (2) Enter an order preliminarily enjoining plaintiffs from
13 voluntarily assisting or cooperating in any proceeding with any
14 person adverse to defendants herein, unless compelled to do so
15 by lawful subpoena or other lawful process;

16 (3) Enter an order preliminarily enjoining plaintiffs from
17 voluntarily testifying or otherwise participating in any
18 judicial, administrative or legislative proceeding adverse to
19 defendants, unless compelled to do so by lawful subpoena or
20 other lawful process;

21 (4) Enter an order preliminarily enjoining plaintiffs from
22 prosecuting this action, until the Court finally determines the
23 question of whether plaintiffs' claims are barred by the release
24 agreements;

25 (5) Order a separate evidentiary hearing on any questions
26 of fact concerning the validity and effect of the releases
27 signed by plaintiffs, such hearing to be held in advance of any
28 trial or motions relating to other aspects of this lawsuit, to

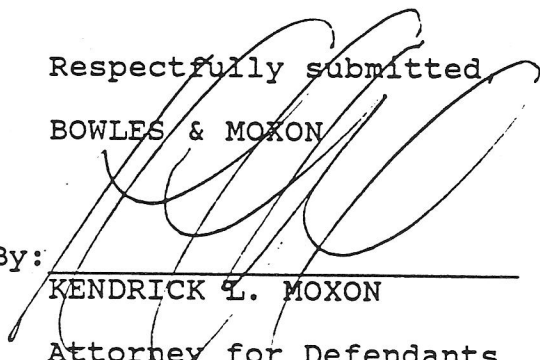
1 enable the Court to make informed findings of fact prior to
2 adjudication of the release issues; and

3 (6) That this Court take such other action as justice
4 requires.

5 Dated: November 9, 1989

Respectfully submitted

BOWLES & MOXON

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8 By: 
KENDRICK L. MOXON

9 Attorney for Defendants

10
11 COOLEY, MANION, MOORE
& JONES, P.C.

12 EARLE C. COOLEY
13 Attorneys for Defendants
14 Church of Spiritual
Technology and Religious
Technology Center

15 RABINOWITZ, BOUDIN,
16 STANDARD, KRINSKY
& LIEBERMAN, P.C.

17 ERIC M. LIEBERMAN
18 Attorneys for Defendant
19 Church of Scientology
International

20 MICHAEL HERTZBERG
21 Attorney for Defendant
22 Author Services, Inc.

MUTUAL RELEASE AGREEMENT

1. This MUTUAL RELEASE AGREEMENT is made and entered into by and between VICKI AZNARAN and the Religious Technology Center; Church of Scientology International; Church of Scientology of California; Church of Spiritual Technology; all other Scientology organizations or entities as well as the officers, agents, representatives, employees, volunteers, trustees, directors, successors, assigns, and legal counsel of each of the forgoing organizations or entities; Pat Broeker and Anne Broeker (hereinafter collectively referred to as the "CHURCH"); and Author Services Incorporated, it's officers, agents, representatives, employees, volunteers, trustees, directors, successors, assigns and legal counsel; the Estate of L. Ron Hubbard, it's executor, beneficiaries, legal counsel and employees; Author's Family Trust, it's trustee, employees, beneficiaries, and legal counsel (hereinafter collectively referred to as the "ESTATE/ASI").

2. The CHURCH agrees to indemnify VICKI AZNARAN against any damages stemming from lawsuits which exist now or are brought against her in the future arising out of her association with the Church of Scientology or any posts she has held in the Church. It is understood that as a part of this agreement the CHURCH will provide free legal counsel to VICKI AZNARAN providing she cooperates fully with the CHURCH and CHURCH attorneys and she contacts the CHURCH immediately when she becomes aware of any potential or real legal threat to herself and/or the CHURCH.

3. For and in consideration of the above mutual covenants, conditions and release contained herein, VICKI AZNARAN does hereby release, acquit and forever discharge for herself, her heirs, successors, executors, administrators and assigns, the CHURCH and the ESTATE/ASI from any and all claims, demands, damages, actions and causes of action of every kind and nature, known or unknown, from the beginning of time to and including the date hereof.

4. For and in consideration of the mutual covenants, conditions and release contained herein, the CHURCH and the ESTATE/ASI do hereby release, acquit and forever discharge for it, its successors and assigns, VICKI AZNARAN, her agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by VICKI AZNARAN from the beginning of time to and including the date hereof.

5. It is understood that this mutual release is not an admission of liability on the part of any party to this Agreement. In executing this Release Agreement, VICKI AZNARAN acknowledges that she has released the organizations, individuals and entities listed in Paragraph 1.

6. Further, the undersigned hereby agree to the following:

A. That liability for any claims is expressly denied by each party herein released, and this Agreement shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. VICKI AZNARAN has been fully advised and understands that any alleged injuries or alleged money claims sustained by her are of such character that the full extent and type of injuries or money claims may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, damages may be sustained by VICKI AZNARAN; nevertheless, VICKI AZNARAN desires by this document to forever and fully release the CHURCH and the ESTATE/ASI. VICKI AZNARAN understands that by the execution of this release no claims arising out of her experience with, or actions by, the CHURCH and the ESTATE/ASI, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by her or on her behalf, against the CHURCH and the ESTATE/ASI.

C. VICKI AZNARAN agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing, or to broadcast, or to assist another to create, write, film or video tape or audio tape, any show, program or movie, concerning her experiences with the Church of Scientology, or personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard, or any entities and individuals listed in Paragraph 1 above. VICKI AZNARAN further agrees that she will maintain strict confidentiality and silence with respect to her experiences with the Church of Scientology and any knowledge or information she may have concerning the Church of

Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. VICKI AZNARAN expressly understands that the non-disclosure provisions of this subparagraph shall apply, but not be limited to, the contents or substance of any documents she may have possessed while in the Church including but not limited to any tapes, films, photographs, or variations thereof which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. VICKI AZNARAN agrees that if the terms of this paragraph are breached by her, that the aggrieved party listed hereinabove would be entitled to liquidated damages in the amount of \$10,000 for each such breach. The reasonableness of the amount of such damages are hereto acknowledged by VICKI AZNARAN.

D. VICKI AZNARAN agrees to return to the CHURCH at the time of the consummation of this Agreement, all materials in her possession, custody or control of any nature - except for any materials she personally possesses that are generally publically available and sold by the Church or their authorized agents - any documents, papers, memorandums, tapes, films, photographs, or any variations thereof which concern or relate to the religion of Scientology or any of the persons or entities listed in Paragraph 1 above.

E. VICKI AZNARAN agrees that she will not voluntarily assist or cooperate with any person adverse to the religion of Scientology in any proceeding against any of the Scientology organizations, or cooperate with any person adverse to any of the organizations, individuals or entities listed in

Paragraph 1 above in any proceeding against any of the organizations, individuals, or entities listed in Paragraph 1 above. VICKI AZNARAN also agrees that she will not cooperate in any manner with any organizations aligned against Scientology or any of the organizations, individuals, or entities listed in Paragraph 1 above.

F. VICKI AZNARAN agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the organizations, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Unless required to do so by such subpoena, VICKI AZNARAN agrees not to discuss her experiences or personal or indirectly acquired knowledge or information concerning the organizations, individuals, or entities listed in Paragraph 1, with anyone other than members of her immediate family. VICKI AZNARAN shall not make herself amenable to service of any such subpoena in a manner which invalidates the intent of this agreement. As provided hereinafter in Paragraph 16, the contents of this Agreement may not be disclosed.

G. VICKI AZNARAN hereby acknowledges and affirms that she is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that her ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

7. This Release Agreement contains the entire Agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. This Release may be

amended only by a written instrument executed by the undersigned. The parties hereto have carefully read and understand the contents of this Release Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

8. VICKI AZNARAN agrees that she will not assist or advise anyone, including partnerships, associations or corporations, contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

9. The parties to this Agreement acknowledge that all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will.

10. In the event any provision hereof is unenforceable, such provision shall not affect the enforceability of any other provision hereof.

11. Each party warrants that it has had an opportunity to seek independent legal advice with respect to the advisability of making the settlement provided for herein and in executing this Agreement. Notwithstanding, VICKI AZNARAN warrants that she fully understand the full nature and legal consequences of this agreement.

12. The parties to this Agreement acknowledge that all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have had the opportunity to seek advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement.

13. The parties hereto acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party or of any officer, agent, employee, representative or attorney for the other party.

14. The parties to this Agreement agree that all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

15. Each party warrants that the persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

16. The parties hereto each agree not to disclose the contents of this executed Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement, on the date opposite their names.

Dated: 9 Apr '87

Vicki Aznaran
VICKI AZNARAN

Dated: 13 April 87

RELIGIOUS TECHNOLOGY
CENTER

Dated: 14 April 1987

By: [Signature]
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Dated: 13 April 1987

By: [Signature]
CHURCH OF SCIENTOLOGY
CALIFORNIA

Dated: 9 April 1987

By: [Signature]
CHURCH OF SPIRITUAL
TECHNOLOGY

Dated: 13 April 1987

By: [Signature]
AUTHOR SERVICES INC.

Dated: 13 April 1987

By: [Signature]
ESTATE OF L. RON HUBBARD

Dated: 13 April 1987

By: [Signature]
AUTHOR'S FAMILY TRUST

MUTUAL RELEASE AGREEMENT

1. This MUTUAL RELEASE AGREEMENT is made and entered into by and between RICK AZNARAN and the Religious Technology Center; Church of Scientology International; Church of Scientology of California; Church of Spiritual Technology; all other Scientology organizations or entities as well as the officers, agents, representatives, employees, volunteers, trustees, directors, successors, assigns, and legal counsel of each of the forgoing organizations or entities; Pat Broeker and Anne Broeker (hereinafter collectively referred to as the "CHURCH"); and Author Services Incorporated, it's officers, agents, representatives, employees, volunteers, trustees, directors, successors, assigns and legal counsel; the Estate of L. Ron Hubbard, it's executor, beneficiaries, legal counsel and employees; Author's Family Trust, it's trustee, employees, beneficiaries, and legal counsel (hereinafter collectively referred to as the "ESTATE/ASI").

2. The CHURCH agrees to indemnify RICK AZNARAN against any damages stemming from lawsuits which exist now or are brought against him in the future arising out of his association with the Church of Scientology or any posts he has held in the Church. It is understood that as a part of this agreement the CHURCH will provide free legal counsel to RICK AZNARAN providing he cooperates fully with the CHURCH and CHURCH attorneys and he contacts the CHURCH immediately when he becomes aware of any potential or real legal threat to himself and/or the CHURCH.

3. For and in consideration of the above mutual covenants, conditions and release contained herein, RICK AZNARAN does hereby release, acquit and forever discharge for himself, his heirs, successors, executors, administrators and assigns, the CHURCH and the ESTATE/ASI from any and all claims, demands, damages, actions and causes of action of every kind and nature, known or unknown, from the beginning of time to and including the date hereof. 941

4. For and in consideration of the mutual covenants, conditions and release contained herein, the CHURCH and the ESTATE/ASI do hereby release, acquit and forever discharge for it, its successors and assigns, RICK AZNARAN, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by RICK AZNARAN from the beginning of time to and including the date hereof.

5. It is understood that this mutual release is not an admission of liability on the part of any party to this Agreement. In executing this Release Agreement, RICK AZNARAN acknowledges that he has released the organizations, individuals and entities listed in Paragraph 1.

6. Further, the undersigned hereby agree to the following:

A. That liability for any claims is expressly denied by each party herein released, and this Agreement shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. RICK AZNARAN has been fully advised and understands 942
that any alleged injuries or alleged money claims sustained by
him are of such character that the full extent and type of
injuries or money claims may not be known at the date hereof,
and it is further understood that said alleged injuries,
whether known or unknown at the date hereof, might possibly
become progressively worse and that as a result, damages may
be sustained by RICK AZNARAN; nevertheless, RICK AZNARAN
desires by this document to forever and fully release the
CHURCH and the ESTATE/ASI. RICK AZNARAN understands that by
the execution of this release no claims arising out of his
experience with, or actions by, the CHURCH and the ESTATE/ASI,
from the beginning of time to and including the date hereof,
which may now exist or which may exist in the future may ever
be asserted by him or on his behalf, against the CHURCH and
the ESTATE/ASI.

C. RICK AZNARAN agrees never to create or publish
or attempt to publish, and/or assist another to create for
publication by means of magazine, article, book or other
similar form, any writing, or to broadcast, or to assist
another to create, write, film or video tape or audio tape,
any show, program or movie, concerning his experiences with
the Church of Scientology, or personal or indirectly acquired
knowledge or information concerning the Church of Scientology,
L. Ron Hubbard, or any entities and individuals listed in
Paragraph 1 above. RICK AZNARAN further agrees that he will
maintain strict confidentiality and silence with respect to
his experiences with the Church of Scientology and any
knowledge or information he may have concerning the Church of

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Scientology, L. Ron Hubbard, or any of the organizations, 943
individuals and entities listed in Paragraph 1 above. RICK
AZNARAN expressly understands that the non-disclosure
provisions of this subparagraph shall apply, but not be
limited to, the contents or substance of any documents he may
have possessed while in the Church including but not limited
to any tapes, films, photographs, or variations thereof which
concern or relate to the religion of Scientology, L. Ron
Hubbard, or any of the organizations, individuals, or entities
listed in Paragraph 1 above. RICK AZNARAN agrees that if the
terms of this paragraph are breached by him, that the
aggrieved party listed hereinabove would be entitled to
liquidated damages in the amount of \$10,000 for each such
breach. The reasonableness of the amount of such damages are
hereto acknowledged by RICK AZNARAN.

D. RICK AZNARAN agrees to return to the CHURCH at the
time of the consummation of this Agreement, all materials in
his possession, custody or control of any nature - except for
any materials he personally possesses that are generally
publically available and sold by the Church or their
authorized agents - any documents, papers, memorandums, tapes,
films, photographs, or any variations thereof which concern or
relate to the religion of Scientology or any of the persons or
entities listed in Paragraph 1 above.

E. RICK AZNARAN agrees that he will not voluntarily
assist or cooperate with any person adverse to the religion of
Scientology in any proceeding against any of the Scientology
organizations, or cooperate with any person adverse to
any of the organizations, individuals, and entities listed in

094

Paragraph 1 above in any proceeding against any of the organizations, individuals, or entities listed in Paragraph 1 above. RICK AZNARAN also agrees that he will not cooperate in any manner with any organizations aligned against Scientology and any of the organizations, individuals, and entities listed in Paragraph 1 above.

944

F. RICK AZNARAN agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the organizations, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Unless required to do so by such subpoena, RICK AZNARAN agrees not to discuss his experiences or personal or indirectly acquired knowledge or information concerning the organizations, individuals, or entities listed in Paragraph 1, with anyone other than members of his immediate family. RICK AZNARAN shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this agreement. As provided hereinafter in Paragraph 16, the contents of this Agreement may not be disclosed.

G. RICK AZNARAN hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

7. This Release Agreement contains the entire Agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. This Release may be

amended only by a written instrument executed by the undersigned. The parties hereto have carefully read and understand the contents of this Release Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

8. RICK AZNARAN agrees that he will not assist or advise anyone, including partnerships, associations or corporations, contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

9. The parties to this Agreement acknowledge that all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will.

10. In the event any provision hereof is unenforceable, such provision shall not affect the enforceability of any other provision hereof.

11. Each party warrants that it has had an opportunity to seek independent legal advice with respect to the advisability of making the settlement provided for herein and in executing this Agreement. Notwithstanding, RICK AZNARAN warrants that he fully understand the full nature and legal consequences of this agreement.

12. The parties to this Agreement acknowledge that all 946
parties have conducted sufficient deliberation and
investigation, either personally or through other sources of
their own choosing, and have had the opportunity to seek
advice of counsel regarding the terms and conditions set forth
herein, so that they may intelligently exercise their own
judgment in deciding whether or not to execute this Agreement.

13. The parties hereto acknowledge that they have not
made any statement, representation or promise to the other
party regarding any fact material to this Agreement except as
expressly set forth herein. Furthermore, except as expressly
stated in this Agreement, the parties in executing this
Agreement do not rely upon any statement, representation or
promise by the other party or of any officer, agent, employee,
representative or attorney for the other party.

14. The parties to this Agreement agree that all parties
have carefully read this Agreement and understand the contents
thereof and that each reference in this Agreement to any party
includes successors, assigns, principals, agents and employees
thereof.

15. Each party warrants that the persons signing this
Agreement have the full right and authority to enter into this
Agreement on behalf of the parties for whom they are signing.

16. The parties hereto each agree not to disclose the
contents of this executed Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into
and executed this Agreement, on the date opposite their names.

Dated: 9 Apr 87

Rick Aznar
RICK AZNARAN

Dated: 23 April 1987

By: Van M...
RELIGIOUS TECHNOLOGY
CENTER

Dated: 14 April 1987

By: [Signature]
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Dated: 13 April 1987

By: [Signature]
CHURCH OF SCIENTOLOGY
CALIFORNIA

Dated: 12 April 1987

By: [Signature]
CHURCH OF SPIRITUAL
TECHNOLOGY

Dated: 13 April 1987

By: [Signature]
AUTHOR SERVICES INC

Dated: 13 April 1987

By: [Signature]
ESTATE OF L. RON HUBBARD

Dated: 13 April 1987

By: [Signature]
AUTHOR'S FAMILY TRUST

By: [Signature]

DECLARATION OF VICKI J. AZNARAN

1
2
3
4 I, Vicki J. Aznaran, make the following declarations on
5 personal knowledge except where the context indicates knowledge
6 based upon information and belief.

7 1. My husband Richard Aznaran and I are plaintiffs in the
8 instant action wherein defendants (hereinafter referred to col-
9 lectively as "Scientology") have moved to strike our entire
10 complaint and to prevent our attorneys from representing us.

11 2. As set forth in more detail below, my husband and I were
12 involved with Scientology for approximately 15 years. For much of
13 that time we were members of an organization known as the Sea
14 Organization. This organization is an elite organization within
15 Scientology. The Sea Organization has considerable influence and
16 control over Scientology organizations. Generally, Sea Organiza-
17 tion members hold the management posts within Scientology.

18 3. In 1978, after approximately four years as staff
19 members, my husband and I joined the Sea Organization. From 1978
20 to early 1987, my husband and I worked most of our waking hours,
21 with very few days off, at our various assignments within
22 Scientology. I eventually became President of Religious
23 Technology Center and, supposedly, the top "ecclesiastical"
24 authority within Scientology. Richard was a high-level security
25 officer. During this period my husband and I became intimately
26 familiar with the structure and activities of various Scientology
27 organizations. Among other things, I was briefed on and sometimes
28 a participant in meetings involving litigation tactics and various

1 means used to attack and fight "enemies" of Scientology. In
2 numerous instances I was in the chain of command or approval for
3 such activities. The legal strategy of Scientology and the
4 existence of numerous potential legal problems, some of which are
5 set forth below, were known to me when I was a staff member in
6 Scientology. Contrary to what I understand to be claimed by
7 defendants herein, Mr. Yanny did not reveal to me the legal
8 strategies or secrets of Scientology. Nor did Mr. Yanny invent or
9 open my eyes to the wrongs that I had suffered at the hands of
10 Scientology.

11 4. I have become an "enemy" of Scientology. This has
12 certain consequences that will influence what Scientology will do
13 in this litigation. For example, it is important to understand
14 that their value system allows dishonesty if done in the name of
15 Scientology.

16 5. Enemies of Scientology are deemed to be "suppressive
17 persons" ("SPs"). One becomes a "suppressive person" by doing a
18 suppressive act, such as suing Scientology as a litigant or
19 lawyer. In the jargon of Scientology, when one is "declared" this
20 means that one has been declared a "suppressive person" and,
21 therefore, may be harassed, hurt, damaged or destroyed without
22 regard to truth, honesty or legal rights. It is considered
23 acceptable within Scientology to lie, cheat, steal and commit
24 illegal acts in the name of dealing with a "suppressive person".

25 6. This practice or policy is sometimes referred to as the
26 policy of "fair game". In the jargon of Scientology, a person who
27 is "declared" is understood to be a suppressive person. This
28 means that the person is "fair game". The fair game policy was

1 issued in the 1960s. It was never cancelled. A document was
2 issued for public relations reasons that purportedly cancelled
3 "fair game"; however, that document stated that it did not change
4 the manner of handling persons declared "SP." In reality, the
5 purported cancellation of fair game is at most a matter of
6 semantics. Enemies of Scientology are treated as "fair game."

7 7. It is my understanding, and I have so testified in my
8 deposition, that when my husband and I escaped from Scientology we
9 were not immediately declared suppressive persons or subjected to
10 the fair game policy. Among other things, we were compelled to do
11 certain things and sign various documents to escape and avoid
12 being subjected to fair game treatment. As we have now sued
13 Scientology, we are "fair game".

14 8. From 1984 through early 1987, I was President of
15 Religious Technology Center (hereinafter "RTC"). As President of
16 RTC and a Sea Organization member, I attended many meetings
17 concerning the numerous legal actions involving Scientology
18 organizations. During this time period, I had personal access to
19 all legal documents having to do with RTC. I received a report
20 every day on my computer that included a synopsis of each ongoing
21 legal case involving Scientology. I received, or so I was told,
22 copies of every major motion filed in cases involving Scientology.
23 I was on the "approval lines" for legal documents dealing with
24 RTC. During this time period, I had the option of attending legal
25 meetings although some were mandatory. I attended many litigation
26 meetings and became generally aware of Scientology's dirty tricks
27 and legal maneuvers. On specifics, I frequently deferred to
28 in-house and outside counsel, however, at least in theory, I was

1 the head of RTC and had access to any business or litigation
2 "secrets" of Scientology.

3 9. As President of RTC, I was one of those responsible for
4 retaining the services of Joseph Yanny as counsel for Scientology
5 organizations. I supervised and worked with Mr. Yanny who served
6 as coordinating attorney for RTC in 1985. I am not aware of any
7 legal or corporate information concerning RTC that was available
8 to Mr. Yanny but not available to me.

9 10. I am informed and believe that various Scientology
10 organizations are contending that Mr. Yanny has somehow improperly
11 educated me on the legal maneuvers, tactics and affairs of
12 Scientology. Although such claims are consistent with litigation
13 tactics of Scientology, which are not constrained by considera-
14 tions such as truth and reality, the proposition that I need
15 Mr. Yanny to educate me on the internal affairs of Scientology is
16 simply wrong. I was one of the highest ranking members of
17 Scientology and was involved in upper management. Mr. Yanny was a
18 lawyer hired by management, of which I was a part, to work for it.
19 Further, it was the practice during the time period in question to
20 screen the information given to outside counsel such as Mr Yanny.

21 11. It is the stated policy and practice of Scientology to
22 use the legal system to abuse and harass its enemies. This crude,
23 fundamental directive of Scientology is no secret. In any event,
24 this information did not come to me from Mr. Yanny. The policy is
25 to do anything and everything possible to harass the opposing
26 litigant without regard to whether any particular motion or
27 maneuver is appropriate or warranted by the facts or applicable
28 law. That policy was followed in every legal case I was involved

1 with or learned about while a member of the Sea Organization. The
2 management of Scientology consistently expressed and demonstrated
3 a complete disdain for the court system viewing it as nothing more
4 than a method to harass enemies. Some examples of this are set
5 forth below.

6 12. During litigation between Gerald Armstrong and
7 Scientology, which was before Judge Breckenridge of Superior Court
8 for Los Angeles County, the court ordered the production of
9 Armstrong's pre-clear ("PC") folders. These are files maintained
10 by Scientology on those who submit to interrogation sessions in a
11 process called auditing. During the course of that litigation I
12 was ordered to go through Armstrong's folders and destroy or
13 conceal anything that might be damaging to Scientology or helpful
14 to Armstrong's case. As ordered, I went through the files and
15 destroyed contents that might support Armstrong's claims against
16 Scientology. This practice is known within Scientology as
17 "culling PC folders" and is a common litigation tactic employed by
18 Scientology.

19 13. During other litigation in Los Angeles known to me as
20 the Wollersheim case, I was told that the judge had ordered the
21 production of Wollersheim's folders. As ordered, I "culled" these
22 files. In other words, I removed contents that might have been
23 damaging to Scientology or support Wollersheim's claims against
24 Scientology. For example, I removed evidence of events involving
25 his family, the anguish this caused him, evidence of disconnection
26 from family and evidence of fair game.

27 14. I was involved in numerous meetings concerning what is
28 known to me as the Christofferson case in Portland, Oregon. This

1 case was tried twice. In the first case, a Scientology witness by
2 the name of Martin Samuels was coached and drilled for hours on
3 how to lie convincingly or avoid telling the truth. Before or
4 during the second trial he admitted to this course of conduct. In
5 this litigation, a Scientologist by the name of Joan Shriver
6 produced responsive documents that may have been incriminating.
7 This was a serious breach of policy for which she was punished.
8 These documents were ordered produced on such short notice that
9 apparently files were not thoroughly "culled". In another case,
10 Mr. Yanny was severely criticized and almost fired for failing to
11 properly coach and feed the desired answers to Heber Jentzsch.
12 Mr. Jentzsch was, for public relations reasons, the purported head
13 of the Church of Scientology International. During his deposi-
14 tion, Mr. Jentzsch was unable to answer fundamental questions
15 concerning the management of Church of Scientology International.
16 This may be what certain defendants are referring to when they say
17 that they were dissatisfied with Mr. Yanny's services and I
18 protected him. There were those, including McShane, who were
19 outraged by the embarrassing testimony of Mr. Jentzsch. This was
20 blamed on Mr. Yanny. I did not wish to discontinue using
21 Mr. Yanny at RTC for this perceived problem.

22 15. In November, 1985, I was present at a meeting whereat
23 Earle Cooley, a Scientologist lawyer, Lyman Spurlock and Norman
24 Starkey, all high ranking Scientologists, announced that they were
25 going to contact Judge Mariana Pfaelzer. Earlier that day Judge
26 Pfaelzer had denied a Scientology motion for a temporary
27 restraining order. After losing on the application there was a
28 meeting to determine what to do about the situation. At the

1 meeting Mr. Cooley had a file that purportedly contained back-
2 ground and personal information on Judge Pfaelzer. During the
3 meeting Mr. Cooley and the others announced that they were going
4 to attempt to meet with Judge Pfaelzer that evening, at her house
5 if necessary, concerning the litigation in which the temporary
6 restraining order had been sought. Thereafter, Mr. Cooley and two
7 others left with their file on Judge Pfaelzer. They returned
8 several hours later at which time I was told that their attempts
9 to contact Judge Pfaelzer had been unsuccessful.

10 16. In late 1979 and early 1980, there was a massive docu-
11 ment destruction program undertaken to destroy any evidence
12 showing that L. Ron Hubbard ("LRH") controlled Scientology. I
13 participated in this activity in Clearwater, Florida and am
14 informed that there was also intensive document destruction at
15 facilities in Gilman Hot Springs, California. From at least that
16 point onward there was a continuous effort to hide or destroy any
17 evidence of Hubbard's control. For example, during an IRS in-
18 vestigation in 1984 and 1985, while in bed with pneumonia, I was
19 ordered out of bed by Norman Starkey who told me that they had
20 received a tip from a Los Angeles Police officer advising them of
21 a pending IRS raid in Los Angeles. Mr. Starkey ordered me to go
22 to a computer facility and insure that all information on the
23 computers in Los Angeles that might show Hubbard's involvement and
24 control of Scientology's money was destroyed except for one copy
25 of each document. These copies were to be saved on computer discs
26 which were to be hidden in secure storage places. At the time I
27 was also instructed to destroy anything that would show the
28 control of Mr. Starkey or Mr. Miscavige over Scientology.

1 17. I have been informed and believe that a an improper
2 affidavit was filed in a case brought by L. Ron Hubbard, Jr. in
3 Riverside, California. The circumstances were as follows: The
4 document purported to be an affidavit of L. Ron Hubbard. The
5 signature of Hubbard was purportedly notarized by David Miscavige.
6 It is my understanding that this affidavit caused the case to be
7 dismissed. Subsequently, I was told by Pat Broeker, who had been
8 living with Hubbard at the time, and by Miscavige, that Miscavige
9 had not seen Hubbard between 1980 and Hubbard's death in 1986.
10 Accordingly, the affidavit was apparently signed, notarized and
11 dated during a time period when Hubbard was in seclusion and not
12 seen by the person who purportedly notarized the signature of
13 Hubbard.

14 18. In or about 1981, while working in a Scientology organi-
15 zation known as the Guardian's Office, I had access to and
16 observed various written and oral communications pertaining to
17 illegitimate activities participated in by the Guardian's Office.
18 The Guardian's Office attempted to infiltrate both governmental
19 and private agencies including the IRS, the Department of Justice,
20 the American Medical Association and the National Institute of
21 Mental Health. The purpose of this was to steal documents pur-
22 suant to Hubbard's "Snow White" program. The goal of this program
23 was to eliminate any negative reports about Hubbard and
24 Scientology that may have been held by these various agencies.

25 19. While involved in Scientology I became aware of various
26 operations directed against an author who had written a negative
27 book about Scientology. The author, Paulette Cooper, was sub-
28 jected to various forms of harassment. One operation included an

1 attempt to frame her. A false bomb threat was written. A
2 Scientology agent lifted a fingerprint from Cooper's apartment.
3 These fingerprints were then transferred to the bomb threat
4 letter. Ms. Cooper was subjected to an investigation and was not
5 cleared until an FBI raid resulted in the seizure of Scientology
6 documents that exposed the operation as a frame-up. There was at
7 least one other operation directed against Ms. Cooper. The
8 substance of it was to plant a boyfriend to reinforce and play
9 upon her suicidal tendencies in the hopes that she would commit
10 suicide.

11 20. In 1976 and 1977, the then Mayor of Clearwater, Florida,
12 Gabe Cazares was involved with litigation against Scientology.
13 Arrangements were made to have an attorney by the name of Merril
14 Vanniere, a Scientologist, represent Mr. Cazares and sabotage his
15 case. This plot was also exposed by documents obtained in an FBI
16 raid of a Scientology facility. Also, in response to Mr. Cazares'
17 litigation against Scientology, an attempt was made to implicate
18 Mr. Cazares in a staged hit-and-run accident.

19 21. During the time period of my involvement with
20 Scientology, I also learned of various attempts to influence
21 judges or force their removal from cases. For example, a private
22 investigator named Dick Bast obtained a statement from a prosti-
23 tute concerning involvement with a certain judge in Washington,
24 D.C. who was sitting on a Scientology case. This was then pub-
25 licized. The judge did not continue on the case. The same
26 investigator, Dick Bast was also hired for the purpose of at-
27 tempting to force the removal of a judge in Tampa, Florida. This
28 involved what I know as the Burden case, which was civil

1 litigation brought by Michael Flynn. Dick Bast secured a yacht
2 and attempted to get the judge on board for the purpose of filming
3 him under compromising circumstances. The judge declined to go
4 yachting and the operation was unsuccessful. Approximately
5 \$250,000.00 was spent on the operation.

6 22. I have been informed by Mark (Marty) Rathbun, a high
7 ranking Scientologist, that his private investigator, Gene Ingram,
8 "fed" a confession to Ala Tamimi when visiting him in an Italian
9 prison. This false confession was, in substance, that Tamimi had
10 been involved in a bad check scam involving an account of L. Ron
11 Hubbard. This false confession implicated attorney Michael Flynn
12 in the check scam. Michael Flynn was at the time considered a
13 major enemy of Scientology because he represented numerous clients
14 with claims against Scientology. This purported confession was
15 used to slander and attack Michael Flynn. Michael Flynn has also
16 been sued by Scientology as part of its "strategy" for handling
17 enemies.

18 23. During an IRS criminal investigation in the 1984 to 1985
19 time period, the IRS ordered production of various communications
20 between Hubbard and Author Services, Inc. (ASI). The ASI staff
21 worked literally day and night for several days reviewing docu-
22 ments so that unfavorable documents could be destroyed or other-
23 wise concealed from the IRS. Lyman Spurlock and Marion M. Dendui,
24 Scientologists involved in this operation, informed me of this
25 operation. Also during this IRS investigation, my husband, Rick
26 Aznaran, was ordered to remove and conceal any incriminating
27 documents from certain locations. He was also directed to make
28 the computer network "raid proof". This involved creating a

1 system where incriminating documents could be deleted from
2 computer storage rapidly and before the IRS could obtain control
3 over the computers.

4 24. In 1985, I attended a conference on "squirrels" attended
5 by Miscavige, Starkey, Spurlock, and McShane, members of top
6 management, and others. In Scientology jargon, "squirrels" are
7 people who use or practice some procedures also used by
8 Scientology but who do not submit to the total control of the
9 Scientology organization and, perhaps most importantly, who do not
10 pay a percentage of their auditing or counseling fees to
11 Scientology. At this meeting, David Miscavige ordered that public
12 Scientologists be organized and motivated to physically attack
13 squirrels and disrupt their operations. This was stated to be
14 pursuant to the standard guidelines of Scientology. Pursuant to
15 such directives, efforts were undertaken to intimidate and disrupt
16 these persons and their organizations.

17 25. In 1981, operation "Juggernaut" was commenced. The
18 purpose of this was to destroy Michael Flynn who, as stated above,
19 was representing various plaintiffs with litigation against
20 Scientology. This operation contemplated the use of infiltration,
21 propaganda and attempts to persuade clients to turn against him.

22 26. The Guardians' Office got into so much trouble, and
23 worse yet got caught, that it was decided in the early 1980's that
24 the Guardians' Office should be disbanded. This was purely a
25 public relations gimmick. In short, it was decided that the
26 Guardians' Office and Mary Sue Hubbard, its then leader, were to
27 take the rap for all criticism and improper conduct. This scheme
28 was laid out in various written communications I observed in 1981

1 and 1982. (Of course, I was not allowed to keep or escape from
2 Scientology with any such incriminating documents.)

3 27. Since the early 1970's, Scientology has operated a
4 forced labor camp known as the Rehabilitation Project Force
5 ("RPF"). Staff members are incarcerated in the RPF for various
6 real or imagined offense. People confined at this camp are forced
7 to perform hard physical labor every day. They eat rice and
8 beans, or left-overs, and wear rags. They are deprived of suf-
9 ficient sleep. In 1987, I was confined in such a camp at Happy
10 Valley for approximately six weeks. I worked all day and was
11 confined in a room at night. To the best of my knowledge I was
12 guarded 24 hours a day. They would not even let me shower alone.
13 I had to obtain permission to use a bathroom. I was ill and not
14 allowed to obtain medical treatment. I was not allowed to com-
15 municate with my husband nor was I allowed to obtain adequate
16 sleep. I was told that I had gone insane and that my husband did
17 not want to communicate with me. I was physically and psycho-
18 logically abused both at Happy Valley and for numerous days
19 thereafter in a process called "security checking". Much over-
20 simplified, I was grilled on a primitive lie detector called an
21 E-Meter and made to understand that I would not be released, have
22 my property returned, or escape fair game policy unless I even-
23 tually gave all of the "right" answers. Examples of "right"
24 answers were responses that I would not talk to a lawyer or
25 consider suing Scientology. I had to give such answers before
26 being released.

27 28. Recovering from the years of brainwashing, thought
28 control and propaganda to which Scientology subjected me is a

1 gradual process that I do not fully understand. I am not a
2 psychologist or psychiatrist and do not fully understand the
3 ramifications of what I have been through although I can observe
4 and experience many symptoms. I have many nightmares and a fear
5 of Scientology.

6 29. The suit brought by Richard Aznaran and myself is based
7 upon real events that happened to real people, namely us. Just as
8 my husband and I do not need Mr. Yanny to educate us on any
9 secrets of Scientology, it is simply untrue that our claims were
10 somehow invented or manufactured by Mr. Yanny. The whimsical
11 notion that Mr. Yanny invented this litigation through my husband
12 and me is simply false.

13 30. My husband and I consider Mr. Yanny to be a friend.
14 Further, it might be noted that Mr. Yanny was to serve as my
15 personal counsel in a class action against Scientology and
16 numerous individuals including myself. Recent events have changed
17 this, however, there was a period of time when Mr. Yanny was
18 purportedly designated as my personal counsel with the approval of
19 Scientology.

20 31. My husband and I feel quite strongly that we want Barry
21 Van Sickle and the firm of Cummins & White to represent us in this
22 case. Our reasons are both subjective and objective. We do not
23 wish to list our subjective reasons, although we will do so if the
24 Court requests it. Objectively, it might be noted that we had
25 considerable difficulty finding counsel willing and in a position
26 to undertake this extremely volatile, time consuming and expensive
27 litigation. We are unable to pay hourly rates to pursue our
28 claims and need a firm willing to work with us on a contingency

1 fee basis. I anticipate great difficulty, delay and prejudice if
2 forced to find other counsel.

3 32. -Based upon my experience within Scientology and as a
4 litigant against it, I understand that this is not routine liti-
5 gation. If I am forced to find other counsel, prospective counsel
6 will be presented with the following situation:

7 (a) A complex case that must be handled on a contin-
8 gency fee and cost-advanced basis;

9 (b) A case that requires a litigation team and sub-
10 stantial financial resources;

11 (c) A case involving an opponent who has a practice and
12 history of suing opposing lawyers as a tactic in addition to
13 subjecting opposing lawyers to surveillance, depositions, infil-
14 tration, bad publicity and the full ramifications of the fair game
15 policy;

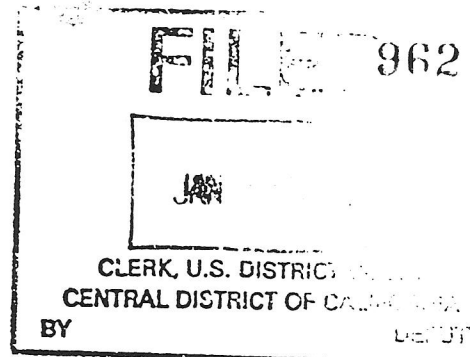
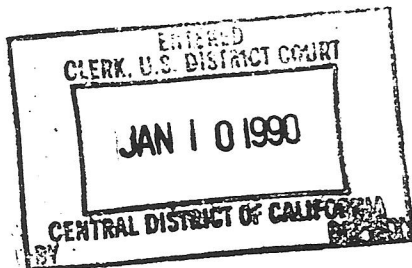
16 (d) A case where the opponent is not constrained by a
17 need to be cost effective, truthful, honest or reasonable; and

18 (e) A case that requires extraordinary security
19 precautions.

20 I declare under penalty of perjury under the laws of the
21 State of California that the foregoing is true and correct.

22 Executed this 8th day of August, 1988, in Dallas, Texas.

23
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25 
26 VICKI J. AZHARAN
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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9 VICKI J. AZNARAN and
10 RICHARD N. AZNARAN,

11 Plaintiffs,

12 v.

13 CHURCH OF SCIENTOLOGY OF
14 CALIFORNIA, et al.,

15 Defendants.

16 RELIGIOUS TECHNOLOGY
17 CENTER, et a.,

18 Counterclaimants,

19 v.

20 VICKI J. AZNARAN and
21 RICHARD N. AZNARAN,

22 Counterdefendants.

) CV 88-1786 JMI (Ex)

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HUB LAW OFFICES

ORDER DENYING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION

23 IT IS HEREBY ORDERED:

24 1. The defendants' motion for preliminary injunction
25 pursuant to Rule 65 of the Federal Rules of Civil Procedure is
26 DENIED.

1 2. The defendants seek a preliminary injunction enforcing
2 the waiver and release agreements entered into between the
3 parties on April 9, 1987. The defendants contend that they are
4 likely to succeed in demonstrating that the agreements are
5 enforceable and they will suffer irreparable harm if the Court
6 does not issue the injunction. The defendants also request a
7 separate evidentiary hearing on the issues raised by the instant
8 motion, including questions of fact concerning the validity and
9 effect of the agreements signed by plaintiffs.

10 3. In this Circuit, a preliminary injunction is available
11 to a party who demonstrates either: (1) a combination for
12 probable success and the possibility of irreparable harm, or (2)
13 that serious questions are raised and the balance of hardships
14 tips in its favor. These two formulations represent two points
15 on a sliding scale in which the required degree of irreparable
16 harm increases as the probability of success decreases. Arcamuzi
17 v. Continental Air Lines, 819 F.2d 935, 937 (9th Cir. 1987),
18 quoting from Oakland Tribune, Inc., v. Chronical Publishing Co.,
19 76 F.2d 1374, 1376 (9th Cir. 1985).

20 4. In the instant action, defendants' motion merely attempt
21 to relitigate the issue of the validity of the release. The Court
22 has already determined in ruling upon defendants' previous motion
23 for summary judgment and motion for reconsideration that the
24 validity of the release is a jury question because there is a
25 genuine issue of material fact as to whether plaintiffs consented
26 to the release. The Court has also ruled that it would be an

unnecessary expenditure of time to have a separate trial on the validity of the release.

The Court further finds that it is unlikely that defendants will succeed in proving the validity of the release because there is substantial evidence in the record that plaintiffs did not consent to the release. Defendants have not shown that they will suffer irreparable harm since since mere injuries, however substantial, in terms of money, time and energy expended in defending a lawsuit are not enough to making a finding of irreparable injury. Sampson v. Murray, 415 U.S. 61, 90 (1974). Defendants do not also have any facts to support its conclusion that plaintiffs are judgment proof. Defendants additionally fail to state in what ways plaintiffs' conduct of helping others in litigation against defendants have irreparably hurt them since claims of irreparable injury must be supported by evidence of actual injury. Speculative losses are not enough. Goldie's Bookstore v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984). Furthermore, any damage to defendants' good will is compensable in monetary damages. Los Angeles Memorial Coliseum v. NFL, 634 F.d 1197, 1202 (9th Cir. 1980).

Although defendants raises serious questions about the validity of the release, the balance does not tip sharply in defendants' favor because plaintiffs would suffer prior restraint on their first amendment rights to freedom of speech, freedom of the press and freedom of association by granting the instant motion. Elrod v. Burns, 427 U.S. 347, 373-74 (1976) (the loss of

1 First Amendment freedoms, even briefly, without doubt constitutes
2 irreparable injury). Thus, defendants' motion is denied.

3 IT IS SO ORDERED.

4 DATED: 8 Jan 90

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7 JAMES M. IDEMAN
8 United States District Judge
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

966

--oOo--

CHURCH OF SCIENTOLOGY INTERNATIONAL,
a California not-for-profit religious
corporation,

COPY

Plaintiff,

vs.

No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25,
inclusive,

Defendants.

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HUB LAW OFFICES

DEPOSITION OF

GERALD ARMSTRONG

Wednesday, July 22, 1992

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REPORTED BY: KATHERINE NG, CSR NO. 6350

I N D E X

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967

EXAMINATION BY:

PAGE

MR. WILSON:

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--oOo--

E X H I B I T S

PLAINTIFF'S FOR
IDENTIFICATION

DESCRIPTION

PAGE

No. 7

16-page declaration by Gerald
Armstrong

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No. 8

Two-page Supporting Declaration of
Gerry Armstrong to Defendants' and
Counter-Claimants' Opposition to
Plaintiffs' and Counter-Defendants'
Motion for Protective Order Re Fifth
Request for Production of Documents
or Things and For Sanctions

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--oOo--

1 there haven't been any communications with the Aznerans.

2 Q. Okay. All right. When was the last time you
3 worked on the Azneran case as a paralegal?

4 A. Well, again, if by that you mean that because
5 I'm a paralegal I answered the phone when Vicky was
6 calling, am I working on the Azneran case as a paralegal?

7 If you say that that's not the case and that's
8 not the way you construe paralegal activity with regard
9 to a case, then I would say that it's quite some time
10 ago.

11 Q. That's how I do understand paralegal activity.
12 It's not just that you answer the phone.

13 A. So it's not just clerical duties that I would
14 do with any, any case?

15 Q. I will define it this way. If you answer the
16 phone because one of your duties is to answer the
17 telephone in the office, that is not a part of your
18 duties as a paralegal on the Azneran case.

19 But if you summarize a deposition, if you
20 prepare pleadings, if you file pleadings, it's a
21 paralegal duty. If you type pleadings, it's a paralegal
22 duty.

23 A. Right. None of those things.

24 Q. When you say "quite some time," can you give me
25 a little bit more specifics on that and how long has it

1 been since you have done any paralegal work on the case?

2 A. Boy, I think probably, I think probably
3 September '91.

4 Q. Okay. Of course paralegal duties would include
5 communications from the Aznerans. Except if the
6 communication was "have Mr. Greene call me," I wouldn't
7 consider that a paralegal duty. But if the communication
8 was anything substantive with regard to the case, I would
9 consider that a paralegal duty, so would that change your
10 answer? Since September of '91, have there been any
11 substantive communications about the case with the
12 Aznerans without revealing the communication?

13 MR. GREENE: That's fine. Go ahead and answer
14 it.

15 THE WITNESS: Okay, then the answer is no.

16 MR. WILSON: Q. Getting back to this
17 declaration, paragraph 3, and the sentence that goes from
18 line 27 onto line 1 through the end of the paragraph
19 which is on page 2 at line 2, you say, quote,

20 "In that declaration, I waived" -- and you
21 refer to a previous deposition -- "I
22 waived the attorney-client privilege
23 between Mr. Flynn and me only to our
24 conversations concerning the settlement,
25 and I reiterate that waiver at this

1 or months after it happened that you became aware of it?

2 A. Probably weeks.

3 Q. And you are aware now that Mr. Greene has again
4 been associated as associate of record in that case?

5 A. Right.

6 Q. And I take it you were aware of that fact
7 approximately at the time it happened?

8 A. Yes.

9 Q. And in the intervening period when Mr. Greene
10 was not counsel of record, I take it you did no work on
11 the Azneran case at all?

12 A. Again when you say no work on the Azneran case,
13 we're using the same definition of paralegal?

14 MR. GREENE: Gerry, it's a simple question and
15 again it's a "yes" or "no" answer.

16 THE WITNESS: In that I received phone calls at
17 that time or relayed phone calls then which may have
18 related to the Azneran case, then, yes, I did.

19 MR. WILSON: Q. It's possible that you may
20 have relayed a phone message that related to the Azneran
21 case; is that right?

22 A. Right.

23 Q. Except for that, have you done any work on the
24 Azneran case?

25 A. Except for phone messages?

1 Q. Right.

2 A. Routed or logged, mailed articles.

3 Q. Would that be the same way a receptionist or
4 secretary would send mail around the office?

5 A. Exactly, right.

6 Q. And except for that, have you done anything
7 related to the Azneran case?

8 A. I believe that anything I have done relating to
9 the Azneran case has been that sort of office clerk,
10 secretary in nature.

11 Q. Can you remember any of the specific things
12 that you have done, whether they're office clerk,
13 secretary or not?

14 MR. GREENE: And just a sec, can we get this
15 clear? This series of questions started out, according
16 to my recollection, directed toward the hiatus period
17 when I had been counsel, then I was not counsel. Now,
18 you're asking if it was in the in-between time?

19 MR. WILSON: That's right.

20 MR. GREENE: So now the scope unintentionally
21 has broadened, so that's okay. If we're going back to --

22 MR. WILSON: No, we're not.

23 MR. GREENE: -- pre-September '91.

24 I want to make sure the question is clear,
25 because your question is less clear to me.

1 MR. WILSON: Q. I'm only talking about the
2 period when Mr. Greene was out of the Azneran case.

3 A. Before July of '91?

4 MR. GREENE: No.

5 MR. WILSON: Q. Whenever he got out of the
6 Azneran case, between that time and the time he got back
7 in.

8 A. So like June of '91 through July of '91.

9 MR. GREENE: July 24.

10 THE WITNESS: So from June 6 '91 through July
11 of '91, no, I didn't do any of those things.

12 MR. WILSON: I thought that.

13 MR. GREENE: There's a fundamental factual
14 problem there. There's two --

15 MR. WILSON: I was speaking of the later one.

16 MR. GREENE: Because there was some time I
17 believe in February of '92 to earlier this month where
18 Elstead was the sole attorney of record for the Aznerans.

19 MR. WILSON: Q. That's the period of time when
20 I'm talking about, February of '92 until the time Mr.
21 Greene recently substituted back into the case.

22 A. So whenever, back to your definition of
23 paralegal work, I didn't do any.

24 Q. And anything you did was taking messages or
25 routing documents; is that correct?

1 A. The secretarial work for Mr. Greene.

2 Q. And can you remember any specific things you
3 did, whether it was secretarial or not?

4 A. Without getting into exactly what they were,
5 that is, the subject matter, copying, mail logging,
6 routing, relaying messages, taking messages.

7 Q. Okay. Let me ask you this question. Back to
8 Mr. Elstead, have you done any other work for Mr.
9 Elstead, other than on the Azneran case?

10 MR. GREENE: In any capacity?

11 MR. WILSON: Right.

12 THE WITNESS: In that Mr. Elstead requested me
13 to testify in the Hunziker case and that I did agree and
14 in that I did testify at deposition, that's what I did
15 for him.

16 MR. WILSON: Q. And what is the Hunziker case?

17 A. It's the case of Steven Hunziker versus Applied
18 Materials.

19 Q. And what did Mr. Elstead ask you to do in that
20 case?

21 A. He asked me if I would testify.

22 Q. In what capacity? What did you know about the
23 case that he wanted you to testify about?

24 A. The case involved Scientology courses being
25 taught at the Applied Materials Company, and he wanted me

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FILED
 LOS ANGELES SUPERIOR COURT

FEB 25 1993

JAMES H. DEMPSEY, CLERK
James H. Dempsey
 BY INNA R. MATTHEWS, DEPUTY

FILED

NOV 16 1994

HOWARD HANSON
 MARIN COUNTY CLERK

DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY
 INTERNATIONAL, a California
 not-for-profit religious
 corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
 through 25, inclusive,

Defendants.

157680
 No. BC 52395

**DEFENDANT'S OBJECTIONS TO
 SUFFICIENCY OF PLAINTIFF'S
 AFFIDAVIT IN SUPPORT OF ORDER
 TO SHOW CAUSE RE CONTEMPT**

Date: March 2, 1993
 Time: 8:30 a.m.
 Dept: 86

Discovery Cut Off: None Set
 Motions Cut Off: None Set
 Trial Date: May 3, 1993

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD AND TO THE CLERK OF
 THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Gerald Armstrong hereby
 submits his objections to the Declaration of Laurie J. Bartilson
 In Support of Order to Show Cause Why Gerald Armstrong Should not
 Be Held In Contempt executed December 31, 1992.

Said objections are submitted pursuant to Code of Civil
 Procedure sections 1211, 1211.5.

ORIGINAL

OBJECTIONS COMMON TO EACH FACTUAL ALLEGATION

1. The contract was obtained by fraudulent representations that Scientology had forsworn "Black PR," "Fair Game," disbanded the Guardian's Office and reformed its antisocial practices and policies which induced Armstrong to enter the contract. Harding v. Robinson (1917) 175 Cal. 534, 538; Wolfe v. Severns (1930) 109 Cal.App. 476, 485; Wells v. Zenz (1927) 83 Cal.App. 137; Williamson & Vollmer Engineering v. Sequoia Ins. Co. (1976) 64 Cal.App.3d 261, 273; 1 Witkin, Summary of California Law, § § 393, 398; Civil Code § 1572 (3).

2. The injunction is based upon a contract that is void as against public policy because it was designed and intended to suppress judicially-credited testimony, obstruct justice and give Scientology an unfair advantage in litigation. LaFortune v. Ebie (1972) 26 Cal.App.3d 72, 75; Lewis & Queen v. M.M. Ball Sons (1957) 48 Cal.2d 141, 147-148; Williamson v. Superior Court (1978) 21 Cal.3d 829, 836-37; People v. Pic'l (1982) 31 Cal.3d 731, 740, 183 CR 685; Mary R. v. B&R Corporation (1983) 149 Cal.App.3d 308, 316, 196 CR 871; Brown v. Freese (1938) 28 Cal.App.2d 608, 618; Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492; Fong v. Miller (1951) 105 Cal.App.2d 411, 414-15. Morey v. Paladini (1922) 187 Cal. 727, 738; Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454; Tappan v. Albany Brewing Co. (1989) 80 Cal. 570, 571-72; Bovard v. American Horse Enterprises (1988) 201 Cal.App.3d 832, 838; Kallen v. Delug (1984) 157 Cal.App.3d 940, 951; Russell v. Soldinger (1976) 59 Cal.App.3d 633, 642; Civil Code sections 1550, 1596, 1598, 1608, 1668; Penal Code sections 136, 136.1, 138; Pomeroy, Equity

1 Jurisprudence (4th Ed.1918) § 397 at 738; Witkin, California
2 Criminal Law (2d ed. 1988), Vol. 2, section 1132, at p. 1311;
3 Witkin, Summary of California Law (9th Ed. 1987) Vol. 1,
4 Contracts, § 441 at 396.

5 3. The injunction is vague, ambiguous and overbroad and is
6 thus incapable of providing sufficient notice of conduct which it
7 prohibits, thereby allowing inquisitional attacks by plaintiff
8 Church of Scientology International on defendant Armstrong.
9 Grayned v. City of Rockford (1972) 408 U.S. 104, 108-09;
10 Papachristou v. City of Jacksonville (1972) 405 U.S. 156, 162,
11 170; Colautti v. Franklin (1979) 439 U.S. 379, 390; Church of
12 Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060,
13 1067, 283 CR 917 [Defendant Armstrong declared suppressive person,
14 labelled an enemy of the church and subjected to Fair Game policy.
15 According to the Fair Game Policy, such persons upon whom it is
16 imposed, "[m]ay be deprived of property or injured by any means by
17 any Scientologist without any discipline of the Scientologist. May
18 be tricked, sued or lied to or destroyed."]]

19 4. The injunction is too uncertain to be specifically
20 performed. Civil Code § 3390 (5). Long Beach Drug Co. v. United
21 Drug Co. (1939) 13 Cal.2d 158, 88 P.2d 698, 701; Lind v. Baker
22 (1941) 48 Cal.2d 234, 119 P.2d 806, 812; Hunter v. Superior Court
23 (1939) 36 Cal.App.2d 100, 97 P.2d 492, 498; Tamarind Lithography
24 Workshop v. Sanders (1983) 143 Cal.App.3d 571, 575; Henderson v.
25 Fisher (1965) 236 Cal.App.2d 468, 477.

26 5. The injunction is unenforceable because it requires
27 continuous and ongoing supervision for which specific performance
28 cannot be employed. Thayler Plymouth Center v. Chrysler Motors

1 Corporation (1967) 255 Cal.App.2d 300, 303, 63 Cal.Rptr. 148;
 2 Lind v. Baker (1941) 48 Cal.2d 234, 119 P.2d 806, 813; Whipple
 3 Quarry Co. v. L.C. Smith Co. (1952) 114 Cal.App.2d 214, 249 P.2d
 4 854, 855; Hunter v. Superior Court (1939) 36 Cal.App.2d 100, 97
 5 P.2d 492, 498.

6 6. The injunction constitutes an unconstitutional prior
 7 restraint of defendant Armstrong's First Amendment right to
 8 Freedom of Speech. Gitlow v. New York (1925) 268 U.S. 652, 666;
 9 Nebraska Press Association v. Stuart (1976) 427 U.S. 539, 559;
 10 Elrod v. Burns (1976) 427 U.S. 347, 373-74, 49 L.Ed.2d 547;
 11 C.B.S., Inc. v. U.S. District Court (9th Cir. 1984) 729 F.2d 1174,
 12 1177, 1183; Organization For A Better Austin v. Keefe (1971) 402
 13 U.S. 415, 419; Buckley v. Valeo (1976) 424 U.S. 1, 25; In Re
 14 Halkin (D.C. Cir. 1979) 598 F.2d 176, 190; Police Department v.
 15 Mosley (1972) 408 U.S. 92, 96; New Era Publications International
 16 v. Henry Holt and Company, Inc. (1988 S.D.N.Y.) 695 F.Supp. 1493,
 17 1506; Thornhill v. State of Alabama (1940) 310 U.S. 88, 95.

18 7. The injunction is a prior restraint on the public's
 19 First Amendment right to Freedom of Speech in that it prevents the
 20 public from access to information on a vital issue - whether or
 21 not Scientology is a benevolent or malevolent organization. First
 22 National Bank of Boston v. Bellotti (1978) 435 U.S. 765, 783;
 23 Kleindienst v. Mandel (1972) 408 U.S. 753, 762-63; Buckley v.
 24 Valeo (1976) 424 U.S. 1, 67; New Era Publications International
 25 v. Henry Holt and Company, Inc. (1988 S.D.N.Y.) 695 F.Supp. 1493,
 26 1506; Red Lion Broadcasting v. F.C.C. (1969) 395 U.S. 367, 390,
 27 392; New York Times v. Sullivan (1964) 376 U.S. 254, 272;
 28 Associated Press v. United States 326 U.S. 1, 20; Whitney v.

1 California (1927) 274 U.S. 357, 377.

2 8. The injunction violates Equal Protection Clause of the
3 Fourteenth Amendment because it discriminates against private
4 plaintiff litigants by depriving them of access to Armstrong's
5 voluntary testimony when allowing Armstrong to provide such to
6 governmental litigant plaintiffs, governmental litigant defendants
7 and private litigant defendants, and because it draws an
8 unconstitutional classification based upon the wealth because the
9 injunction conditions the availability of sworn testimony on
10 paying the costs of subpoena service and the taking of depositions
11 therefore adversely impacting private plaintiff litigants right to
12 redress of grievances. DeJonge v. Oregon (1937) 299 U.S. 353,
13 364-65; Douglas v. California (1963) 372 U.S. 353; Harper v.
14 Virginia Board of Education (1966) 383 U.S. 663; Boddie v.
15 Connecticut (1971) 401 U.S. 371;

ALLEGATION NO. A.

Armstrong's alleged statement that no court would order enforcement of the entire settlement agreement and that he could not honor the entire settlement agreement. (Bartilson Decl. ¶ 4.)

OBJECTIONS:

1. Beyond the scope. Said allegation alleges conduct that is outside of the scope of the injunction because said conduct and statement of Armstrong refers to the settlement agreement.¹/

2. Hearsay. The statement violates Evidence Cod § 1200.

ALLEGATION NO. B.

Armstrong allegedly notifying Los Angeles Times reporter Robert Welkos of the issuance of the preliminary injunction. (Bartilson Decl. ¶ 5.)

OBJECTIONS:

1. Beyond the scope. Said allegation alleges conduct that is outside of the scope of the injunction because said conduct and statement of Armstrong refers notifying a newspaper of a judicial event.

2. The statement violates Evidence Code § 1200.

¹ Indeed, this is true. Compare the provision of Paragraph 7-H requiring avoidance of subpoenas to testify (OSC Appl. Ex. B, pp. 10-11) with Paragraphs 6(a)-(d) of the preliminary injunction which allow Armstrong not to avoid such service. (OSC Appl. Ex. A, p. 2.)

1 ALLEGATION NO. C.

2 Armstrong allegedly requesting a fax from Laurie J. Bartilson
3 of a ruling in Aznaran v. Church of Scientology; (Bartilson
Decl. ¶ 9)

4 OBJECTIONS:

5 1. Scientology is judicially estopped from claiming such
6 act is a violation because it recognized at the hearing on the
7 preliminary injunction and during Armstrong's deposition that
8 routine clerical or paralegal tasks that could be performed by
9 anyone and concerning which there was no nexus between Armstrong's
10 special knowledge derived from his experience with Scientology and
11 the task being performed did not fall within the scope of the
12 injunction. (See, Exhibit C, at pp. 45:6-27, 48:28-50:25, 51:11;
13 Exhibit K, at pp. 190:2-191:15, 197:3-198:10, 199:19-200:6); Ng
14 v. Hudson (1977) 75 Cal.App.3d 250, 258, 142 CR 69; Coleman v.
15 Southern Pacific Company (1956) 141 Cal.App.2d 121, 296 P.2d 386,
16 391-92.

17 2. The statement violates Evidence Code § 1200 (Hearsay).
18

19 ALLEGATION NO. D.

20 Armstrong allegedly executing two proofs of service in
21 Aznaran. (Bartilson Decl. ¶ 11.)

22 OBJECTIONS:

23 1. Scientology is judicially estopped from claiming such
24 act is a violation because it recognized at the hearing on the
25 preliminary injunction and during Armstrong's deposition that
26 routine clerical or paralegal tasks that could be performed by
27 anyone and concerning which there was no nexus between Armstrong's
28 special knowledge derived from his experience with Scientology and

the task being performed did not fall within the scope of the injunction. (See, Exhibit C, at pp. 45:6-27, 48:28-50:25, 51:11; Exhibit K, at pp. 190:2-191:15, 197:3-198:10, 199:19-200:6); Ng v. Hudson (1977) 75 Cal.App.3d 250, 258, 142 CR 69; Coleman v. Southern Pacific Company (1956) 141 Cal.App.2d 121, 296 P.2d 386, 391-92.

2. The statement violates Evidence Code § 1200 (Hearsay).

ALLEGATION NO. E.

Armstrong allegedly broadly discussing with the Aznarans matters relating to their case against Scientology, assisted in the relay of communications between the Aznarans and Ford Greene, and provided assistance to claimants Tillie Good, Denise Cantin and Ed Roberts. (Bartilson Decl. ¶ 12.)

OBJECTIONS:

1. Scientology is judicially estopped from claiming such act is a violation because it recognized at the hearing on the preliminary injunction and during Armstrong's deposition that routine clerical or paralegal tasks that could be performed by anyone and concerning which there was no nexus between Armstrong's special knowledge derived from his experience with Scientology and the task being performed did not fall within the scope of the injunction. (See, Exhibit C, at pp. 45:6-27, 48:28-50:25, 51:11; Exhibit K, at pp. 190:2-191:15, 197:3-198:10, 199:19-200:6); Ng v. Hudson (1977) 75 Cal.App.3d 250, 258, 142 CR 69; Coleman v. Southern Pacific Company (1956) 141 Cal.App.2d 121, 296 P.2d 386, 391-92.

2. The factual allegation is insufficient because there is no specificity aside from the fact that Armstrong "spoke" to the

1 said individuals.

2 3. Hearsay. The statement violates Evidence Code § 1200.

3
4 **ALLEGATION NO. F.**

5 Armstrong allegedly writing and mailing a letter dated
6 12/22/92 to Laurie J. Bartilson offering a plan to
settle his case and others. (Bartilson Decl. ¶ 13.)

7 **OBJECTIONS:**

8 1. The letter is privileged within the meaning of Civil
9 Code § 47 (b)(2); Silberg v. Anderson (1990) 50 Cal.3d 205, 211-
10 12, 266 Cal.Rptr. 638; Profile Structures, Inc. v. Long Beach
11 Building Material Company (1986) 181 Cal.App.3d 437, 441-43, 226
12 Cal.Rptr. 192; Long v. Pinto (1981) 126 Cal.App.3d 946, 948-49,
13 179 Cal.Rptr. 185.

14
15 **ALLEGATION NO. G.**

16 Armstrong allegedly mailing copies of his 12/22/92
17 letter to 35 individuals including anti-Scientology
18 litigants and attorneys Vicki and Richard Aznaran, Larry
Wollersheim, Joseph Yanny, Toby Plevin, John Elstead and
Dan Leipold. (Bartilson Decl. ¶ 14.)

19 **OBJECTIONS:**

20 1. The mailing of the letter is privileged within the
21 meaning of Civil Code § 47 (b)(2); Silberg v. Anderson (1990) 50
22 Cal.3d 205, 211-12, 266 Cal.Rptr. 638; Profile Structures, Inc.
23 v. Long Beach Building Material Company (1986) 181 Cal.App.3d 437,
24 441-43, 226 Cal.Rptr. 192; Long v. Pinto (1981) 126 Cal.App.3d
25 946, 948-49, 179 Cal.Rptr. 185.

26 2. The statement violates Evidence Code § 1200 (Hearsay).

27
28

1 ALLEGATION NO. H.

2 Armstrong allegedly being interviewed on videotape by
3 Jerry Whitfield whom Scientology is suing through one of
4 its staff members. (Bartilson Decl. ¶¶ 21-22.)

5 OBJECTIONS:

6 1. Beyond the scope. Said allegation alleges conduct that
7 is outside of the scope of the injunction because said videotaped
8 interview was with Jerry Whitfield, a private litigant defendant
9 adverse to Scientology, and the terms of the injunction prohibits
10 Armstrong from "voluntarily assisting any person intending to
11 make, intending to press, intending to arbitrate, or intending to
12 litigate a claim against the persons referred to in sec. 1 of the
13 'Mutual Release of All Claims and Settlement Agreement,'" that
14 is, private litigant plaintiffs.

15 2. Scientology is judicially estopped from claiming such
16 act is a violation because it recognized at the hearing on the
17 preliminary injunction and during Armstrong's deposition that
18 routine clerical or paralegal tasks that could be performed by
19 anyone and concerning which there was no nexus between Armstrong's
20 special knowledge derived from his experience with Scientology and
21 the task being performed did not fall within the scope of the
22 injunction. (See, Exhibit C, at pp. 45:6-27, 48:28-50:25, 51:11;
23 Exhibit K, at pp. 190:2-191:15, 197:3-198:10, 199:19-200:6); Ng
24 v. Hudson (1977) 75 Cal.App.3d 250, 258, 142 CR 69; Coleman v.
25 Southern Pacific Company (1956) 141 Cal.App.2d 121, 296 P.2d 386,
26 391-92.

27 3. The statement violates Evidence Code § 1200 (Hearsay).
28

1 DATED: February 23, 1993

HUB LAW OFFICES

2 and PAUL MORANTZ

3
4 By: 

5 FORD GREENE

6 Attorneys for Defendant

7 GERALD ARMSTRONG

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

DEFENDANT ARMSTRONG'S OBJECTIONS TO SUFFICIENCY OF AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE RE CONTEMPT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

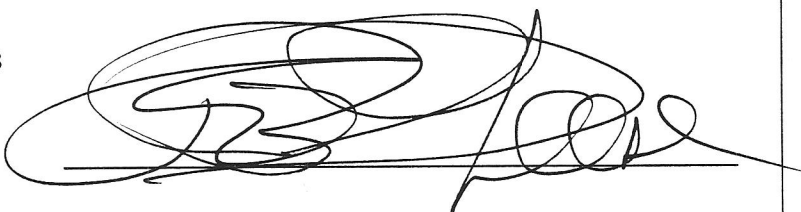
PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

☒ (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

☐ (Personal) I caused said papers to be personally service on the office of opposing counsel.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: February 25, 1993



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Attorney for Defendant
 GERALD ARMSTRONG

FILED
 LOS ANGELES SUPERIOR COURT

FEB 25 1993

JAMES H. ...
 BY INNA R. MATTHEW

FILED

SUPERIOR COURT OF THE STATE OF CALIFORNIA NOV 16 1994

IN AND FOR THE COUNTY OF LOS ANGELES HOWARD HANSON
 MARIN COUNTY

CHURCH OF SCIENTOLOGY
 INTERNATIONAL, a California
 not-for-profit religious
 corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
 through 25, inclusive,

Defendants.

No. BC 052395

DEFENDANT ARMSTRONG'S
 MEMORANDUM IN OPPOSITION TO
 ORDER TO SHOW CAUSE RE
CONTEMPT [Supplemental] ^{1/}

Date: March 2, 1993

Time: 8:30 a.m.

Dept: 86

Trial Date: May 3, 1993

Discovery Cut Off: None Set

Motion Cut Off: None Set

ORIGINAL

¹ Mr. Armstrong hereby incorporates by reference as though fully set forth each of the arguments and supporting authorities set forth in his Objections to Sufficiency of Affidavit in Support of Order to Show Cause. In addition, this opposition is based upon all the papers and records in the court's file and on Armstrong's Appellant's Opening Brief, a copy of which is in this Court's file, currently before the Second District Court of Appeal.

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2	(1982) 31 Cal.3d 731	
2	183 CR 685	-9-
3	Sorenson v. Superior Court	
4	(1969) 169 Cal.App.2d 73	
4	74 CR 597	-7-, -8-
5	Tappan v. Albany Brewing Co.	
6	80 Cal. 570	-11-
7	Tiedje v. Aluminium Paper Milling Co.	
7	(1956) 46 Cal.2d 450	
8	296 P.2d 554	-10-
9	United Farm Workers v. Superior Court	
9	(1975) 14 Cal.3d 902	
10	122 CR 827	-8-
11	United States v. Heldt	
11	(1981) 668 F.2d 1238	
12	cert. denied (1982) 102 S.Ct. 1971	-13-
13	United States v. Zolin	
13	(9th Cir. 1987) 809 F.2d 1411	-1-, -2-
14	United States v. Zolin	
15	(9th Cir. 1990) 905 F.2d 1344	
16	cert. denied, Church of Scientology	
16	v. United States (1991) 111 S.Ct. 1309	-2-
17	Wollersheim v. Church of Scientology	
18	(1989) 212 Cal.App.3d 872,	
19	pet. for cert. granted, vacated and	
20	remanded on other grounds, 111 S.Ct. 1298 (1991);	
21	aff'd on remand 4 Cal.App.4th 1074 (1992);	
22	review granted S011790 (1992)	-12-

INTRODUCTION

This case arises out of a battle between former Scientologist Gerald Armstrong and the Scientology organization. In substance, while a Scientologist Armstrong discovered a wealth of documents that established that Scientology founder, L. Ron Hubbard, had consistently lied about his past accomplishments and credentials, and was not a man of religion but instead ruled Scientology with an iron hand by means of the notorious "Fair Game Policy."^{1/} Having been labelled "Fair Game" after leaving Scientology, Armstrong, who had been Hubbard's archivist, obtained from Omar Garrison, Hubbard's biographer, documents which exposed Hubbard's lies so as to protect himself, and sent these documents to the lawyer who would defend him, Michael Flynn. On August 2, 1982, Scientology sued Armstrong in LASC No. C420153 ("Armstrong I") for conversion of the documents. Armstrong cross-complained for harassment. Scientology's complaint was tried before the Honorable Paul G. Breckenridge who found what Armstrong said about Scientology was true. (Exhibit A.) Thereafter, the cross-complaint was settled. Provisions of the settlement agreement required Armstrong to assist in obtaining the return of Scientology documents including certain tapes in United States v. Zolin,^{2/} to not cooperate with, voluntarily testify for, or

¹ Fair Game is the policy to be enforced against "enemies" of Scientology or "suppressive persons." Allard v. Church of Scientology of California (1976) 58 Cal.App.3d 439, 443, fn. 1; Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1067, 283 CR 917 [Defendant Armstrong declared suppressive person, labelled an enemy of the church and subjected to fair game policy.] According to the Fair Game Policy, such persons upon whom it is imposed, "[m]ay be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed." Ibid; Allard v. Church of Scientology of California (1976) 58 Cal.App.3d 439, 443, fn. 1.

² In United States v. Zolin (1989) 109 S.Ct. 2619, the Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." Id. at 2630. In Zolin, the Supreme Court reversed the

(continued...)

1 assist any adverse Scientology litigant, governmental or
 2 otherwise, and not be amenable to process service. The settlement
 3 also called for Armstrong not to oppose the appeal of the
 4 Breckenridge decision and, unbeknownst to Armstrong, part of the
 5 settlement included side agreements wherein Scientology agreed to
 6 a limit of damages on retrial of \$25,000.00, and when paid, to
 7 secretly reimburse Armstrong's counsel. (Exhibit B) In other
 8 words, this was a plan to eliminate the Breckenridge decision
 9 preventing collateral estoppel in other litigation, and replacing
 10 it with a public relations victory for Scientology, a "rigged" re-
 11 trial following a "rigged" appeal. ^{3/}

12 We contend such a contract violates public policy.

13 Thereafter, when in late 1991 Scientology sought to enforce
 14 the contract before Judge Bruce Geernaert, who had replaced the
 15 retired Judge Breckenridge in Department 56, Judge Geernaert
 16 refused to do so. He found that the court had no jurisdiction
 17 because the contract had never been submitted to the court as

18 ²(...continued)

19 Ninth Circuit's ruling in United States v. Zolin (9th Cir. 1987)
 20 809 F.2d 1411 that the Government had not made a sufficient
 21 showing that there had been "illegal advice ... given by
 22 [Scientology] attorneys to [Scientology] officials" to invoke the
 23 crime-fraud exception to the attorney-client privilege. Upon
 24 reversing and remanding, the Supreme Court ordered the Ninth
 25 Circuit to review partial transcripts of the tape recording
 26 sought by the IRS in a criminal investigation of Scientology to
 27 determine whether the crime-fraud exception to the privilege
 28 applied. On remand, the Ninth Circuit Court held:

21 "The partial transcripts demonstrate that the purpose of the
 22 [Mission Corporate Category Sort Out] project was to cover up past
 23 criminal wrongdoing. The MCCS project involved the discussion and
 24 planning for future frauds against the IRS, in violation of 18
 25 U.S.C. § 371. [citation.] The figures involved in MCCS admit on
 26 the tapes that they are attempting to confuse and defraud the U.S.
 27 Government. The purpose of the crime-fraud exception is to exclude
 28 such transactions from the protection of the attorney-client
 privilege." United States v. Zolin (9th Cir. 1990) 905 F.2d 1344,
 1345. cert. denied, Church of Scientology v. United States (1991)
 111 S.Ct. 1309.

³ This plan fell awry recently as the appellate court
 confirmed the Breckenridge decision anyway. Church of Scientology
v. Armstrong (1991) 232 Cal.App.3d 1060.

1 Judge Breckenridge had ordered, and that if the agreement had been
2 so submitted, it would have been rejected as a violation of public
3 policy. ⁴/

4 When the instant litigation, Armstrong II, thereafter
5 commenced, it came back before Judge Geernaert whom Scientology
6 peremptorily disqualified. ⁵/ When Judge Sohigian ruled on the
7 motion for a preliminary injunction, he disagreed with Judge
8 Geernaert in part, finding that the agreement violated public
9 policy as to plaintiff and defendant public entity litigants and
10 as to private defendant litigants, but not as to private plaintiff

11 ⁴ Judge Geernaert stated:
12 "And I make sure that it is the kind of clear and concise order
13 that can be the subject of a contempt proceeding. So my belief is
14 Judge Breckenridge, being a very careful judge, follows about the
15 same practice and if he had been presented with that whole
16 agreement and if he had been asked to order its performance, he
17 would have dug his feet in because that is one of the -- I have
18 seen -- I can't say -- I'll say one of the most ambiguous, one-
19 sided agreements I have ever read. And I would not have ordered
20 the enforcement of hardly any of the terms had I been asked to,
21 even on the threat that, okay, the case is not settled.

22 I know we like to settle cases. But we don't want to settle
23 cases and, in effect, prostrate the court system into making an
24 order which is not fair or in the public interest.

25 So basically, I have to conclude based upon the record that
26 there was no order; simply, he wasn't presented the order. He was
27 not asked to order its performance. He didn't order its
28 performance." (Exhibit D at p. 52.)

⁵ Initially, Armstrong demurrered based on public policy
22 grounds and a hearing was set for July 2, 1992. On May 26, 1992
23 Armstrong moved Judge Sohigian, before whom the hearing on
24 Scientology's motion for preliminary injunction was being heard,
25 to rule on the demurrer in accordance with LASC Local Rule 314
26 which requires that the court hearing a motion for a preliminary
27 injunction while a demurrer is pending hear the demurrer first.
28 Judge Sohigian refused to do so. (Exhibit E, at p. 34.)
Thereafter, Judge Horowitz refused to rule on the public policy
argument as was set forth in the demurrer. (Exhibit F.) On July
13, 1992, Armstrong filed a petition for a writ of mandamus which
the Court of Appeal held for four months before denying "for
absence of facts showing entitlement to extraordinary relief."
(Exhibit G.)

litigants. ^{6/}

The issue of illegality is now before this court because there can be no contempt conviction based upon an order made in excess of the court's jurisdiction inasmuch as the agreement upon which it is based violates public policy and improperly impinges on protected First Amendment right of Free Speech and the right to contract and employment, because the injunction is ambiguous and requires constant supervision and because it was procured by fraud. Finally, plaintiff asserts that based upon the only reasonable interpretation of Judge Sohigian's order, he did not violate it.

I. STATEMENT OF FACTS

A. Armstrong I

After a lengthy trial, Judge Paul G. Breckenridge, Jr., filed his Memorandum of Intended Decision in Armstrong's favor on June 22, 1984 finding, inter alia, as follows:

"As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. . . . Each has broken with the movement for a variety of reasons, but at the same time each is still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with such abuse.

. . . In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it

⁶ Currently, the grant of the preliminary injunction in this case is on appeal before Division 3 of the Second District. Appellant's opening brief was filed on January 20, 1993. Respondent's brief is due on March 22, 1993. Since the issues going to the illegality of the agreement from which the injunction was derived are before the appellate court, it would further judicial economy and the administration of justice for this Court to defer ruling on the OSC re Contempt pending the appellate court's determination of the issues. One reason for this is the disparate manner in which various departments of this Court have dealt with Armstrong's assertion that the agreement is illegal.

perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. 7/

Exhibit A, at p. 7-8.

After the Breckenridge decision, Armstrong's cross-complaint remained to be tried. It was settled in December 1986 by the contract giving rise to the instant litigation.

B. The Preliminary Injunction Hearing

Scientology at the May 27, 1992 hearing on its preliminary injunction motion argued that Armstrong had violated the settlement agreement in two ways.

One, he had executed substantive declarations in violation of Paragraph 7-H. (Exhibit C, Transcript, May 27, 1992, at pp. 12:26-13:22, 44:15-45:5, 48:7-27.) Two, he worked as a paralegal for Ford Greene in violation of Paragraph 7-G. (Id., at p. 45:6-

7 Judge Breckenridge noted Scientology's fraud against the public, history of hiding evidence, including shredding evidence (Exhibit A, at p. 2 in Appendix thereto), and that Scientology engaged in "a somewhat sophisticated effort to suppress (Howard Schomer's) testimony . . . it is abundantly clear they sought to entice him back into the fold and prevent his testimony. (Id. at Appendix p. 15) Judge Breckenridge also ruled that Armstrong was free to discuss his Scientology experiences (Id. at p. 3), and thereafter Scientology commenced using contracts such as that underlying the instant action to silence Armstrong and the Armstrong witnesses.

Some of the valuable testimony of Armstrong which the contract seeks to suppress appears also in Judge Breckenridge's decision. Armstrong located documents in the archives of Scientology's founder, L. Ron Hubbard, indicating that representations made by Scientology and Hubbard were lies.

When he tried to prevent further deceit on the public, Armstrong was ordered to submit to a "security check." (Id. at Appendix p. 9) He was declared a "suppressive person," was falsely accused of crimes, and made subject to Scientology's "Fair Game Doctrine" -- may be "tricked, cheated, lied to, sued, or destroyed." (Id. at Appendix p. 13.) Armstrong had extensive knowledge of the "covert and intelligence operations" carried out by Scientology against its enemies. (Id. at p. Appendix p. 14.) He was then harassed, followed, surveilled, assaulted, struck by a car, attempted to be hit on the freeway, and trespassed upon by Scientology operatives. (Ibid.)

1 27)

2 As to the latter manner of alleged violation, Scientology
3 agreed there had to be a "nexus between Armstrong's behavior on
4 the one hand and something having to do with information that he
5 ha[d] because of his affiliation with [Scientology] on the other
6 hand[.]" (Id., at p. 48:28-50:25.) Indeed, the discussion
7 regarding Paragraph 7-G between Judge Sohigian and Scientology
8 counsel regarding "some reasonable construction of the contract"
9 (Id., at p. 51:11) proceeded as follows:

10 THE COURT: . . . what we're trying to do is we're trying
11 to construe the agreement reasonably so that we know what it means
12 to quote "voluntarily assist or cooperate with any person adverse
13 to Scientology in any proceeding against any of the Scientology
14 organizations" and so forth, end quote. Voluntary assistance or
15 cooperation doesn't mean voluntary assistance or cooperation which
16 doesn't trade on some special talent or skill Mr. Armstrong has .
17 . . .

18 MR. WILSON: Obviously not. I mean, obviously the intent
19 of the agreement was that there had to be some connection between
20 what Armstrong was doing and what he had previously been involved
21 with with the organization.

22 (Id., at p. 50:5-25.)

23 On May 28, 1992 Judge Sohigian tracked the above quoted
24 discussion in the language that he used when he issued the
25 preliminary injunction. (See, Exhibit A to OSC Application ("OSC
26 Appl."))⁸/

27 **C. Allegations Supporting OSC re Contempt**

28 Although Scientology alleges that Armstrong has committed

⁸ The Order was not only based on Paragraph 7-G of the
settlement agreement as stated by Scientology on page 2 of its OSC
application. It was also based on Paragraph 7-H which states:

"H. Plaintiff agrees not to testify or otherwise participate
in any judicial, administrative or legislative proceeding adverse
to Scientology or any of the Scientology Churches, individuals or
entities listed in Paragraph 1 above unless compelled to do so by
lawful subpoena or other lawful process. Plaintiff shall not make
himself amenable to service of any such subpoena in a manner which
invalidates the intent of this provision. Unless required to do
so by such subpoena, Plaintiff agrees not to discuss this
litigation or his experiences with and knowledge of the Church
with anyone other than members of his immediate family. As
provided hereinafter in Paragraph 18(d), the contents of this
Agreement may not be disclosed." (pp. 10-11 of the Settlement
Agreement, Exhibit B to OSC Appl.)

seven violations of the preliminary injunction in its Points and Authorities (see OSC Appl. at pp. 12:28-13:3), based upon Ms. Bartilson's charging declaration, it would appear that eight violations are actually charged. Turning to Ms. Bartilson's declaration, those are found in her declaration at ¶¶ 4 (statement regarding the contract), 5 (notification of press re issuance of injunction), 9 (requesting fax of order), 11 (execution of two proofs of service), 12 (transferring telephone calls), 13 (writing and sending settlement letter), 14 (sending copies of settlement letter to others), 21-22 (giving videotaped interview to person whom Scientology is suing).

II. ESSENTIAL STANDARDS RE CONTEMPT

A. Armstrong Is Entitled To Criminal Procedural Safeguards

The alleged contemnor is entitled to criminal procedural safeguards, City of Culver City v. Superior Court 38 Cal.2d 435, 541, 241 P.2d 258; Uhler v. Superior Court (1953) 117 Cal.App.2d 147, 255 P.2d 29, 32, and his guilt must be established beyond a reasonable doubt. In re Witherspoon (1984) 162 Cal.App.3d 1000, 1002; Local Rule ¶ 332. The affidavit required by the statutory declaration is the means by which the accused is given notice of the nature of the charge against which he must defend. Freeman v. Superior Court (1955) 44 Cal.2d 533, 536-37, 282 P.2d 857. In re Hess (1955) 45 Cal.2d 171, 175, 288 P.2d 5; C.C.P. §§ 1211, 1211.5.

B. The Underlying Order May Be Collaterally Attacked

An order of contempt cannot stand if the underlying order is invalid. In re Blaze (1969) 271 Cal.App.2d 210, 212, 76 CR 551; In re Misener (1985) 38 Cal.3d 543, 558, 213 CR 569.

"To hold a person guilty of contempt for violating an injunction, the acts constituting the contempt must be clearly and specifically prohibited by the terms of the injunction. [Citations.] The party bound by an injunction must be able to determine from its terms what he may or may not do; he cannot be held guilty of contempt for violating an injunction that is uncertain or ambiguous (Ibid.), just as he may not be held guilty of violating a criminal statute that fails to give him adequate notice of the prohibited acts. (Brunton v. Superior Court (1942) 20 Cal.2d 202, 205, 124 P.2d 831, 833.)"

Sorenson v. Superior Court (1969) 169 Cal.App.2d 73, 78, 74 CR 597. Therefore, any ambiguity in the court order alleged to have

1 been violated must be resolved in favor of the accused. Ibid.; In
 2 re Blaze, supra at 212; Gottlieb v. Superior Court (1959) 168
 3 Cal.App.2d 309, 313, 335 P.2d 714, 717.

4 No one may be punished in contempt for the disobedience of a
 5 void order. Kreling v. Superior Court (1941) 18 Cal.2d 884, 885,
 6 118 P.2d 470. If the court acts in excess of its jurisdiction in
 7 issuing the underlying order, there is no basis for the order of
 8 contempt. Elysium, Inc. v. Superior Court (1968) 266 Cal.App.2d
 9 763, 765, 72 CR 355. "[A] broad meaning is given to the term
 10 'jurisdiction.'" Bd. of Med. Examiners v. Terminal-Hudson
 11 Electronics (1977) 73 Cal.App.3d 376, 388, 140 CR 757. Indeed,
 12 our Supreme Court defined the meaning of jurisdiction as follows:

13 "In this state it is clearly the law that the violation of an
 14 order in excess of the jurisdiction of the reviewing court cannot
 15 produce a valid judgment of contempt [Citations] and that the
 16 "jurisdiction" in question extends beyond mere subject matter or
 17 personal jurisdiction to that concept described by us in Abelleira
 18 v. District Court of Appeal (1941) 17 Cal.2d 280, at page 291 ...
 19 "Speaking generally, any acts which exceed the defined power of a
 20 court in any instance, whether that power be defined by
 21 constitutional provision, express statutory declaration, or rules
 22 developed by the courts and followed under the doctrine of *stare*
 23 *decisis*, are in excess of jurisdiction, ..."

24 In re Berry (1968) 68 Cal.2d 137, 147, 65 CR 273; California
 25 Retail Liquor Dealers Institution v. United Farm Workers (1976) 57
 26 Cal.App.3d 606, 610.

27 "a person affected by an injunctive order which exceeds the
 28 jurisdiction of the issuing court has the choice of complying with
 the order and bringing a judicial challenge, or disobeying it and
 subsequently attacking its validity when he is charged with
 contempt."

United Farm Workers v. Superior Court (1975) 14 Cal.3d 902, 907,
 fn. 3, 122 CR 827.

"Here it may be applied to a case where, though the court has
 jurisdiction over the subject matter and the parties in the
 fundamental sense, it has no 'jurisdiction' (or power) to act
 except in a particular manner, or to give certain kinds of relief,
 or to act without the occurrence of certain procedural
 prerequisites." (Abelleira v. District Court of Appeal (1941) 17
 Cal.2d 280, 288, 109 P.2d 942, 947.) Accordingly, "An injunction
 based upon an unconstitutional ordinance exceeds the issuing
 court's jurisdiction [Citation.]" (Welton v. City of Los Angeles
 (1976) 18 Cal.3d 497, 507, 134 CR 668 ...) and cannot provide a
 basis for adjudging the respondent party (here Opti-Cal) in
 contempt."

1 Ibid. at fn. 9.

2 Likewise, an injunction based upon a contract which is void
3 as either being in restraint of trade or against public policy is
4 subject to collateral attack. Thus, if a court grants injunctive
5 relief, which under no circumstances it has any authority to grant
6 to that extent its judgment is void. Hunter v. Superior Court
(1939) 36 Cal.App.2d 100, 97 P.2d 492.

7 1. The Underlying Contract, Hence
8 The Injunction, Is Illegal

9 A party need not plead the illegality as a defense and the
10 failure to do so constitutes no waiver. In fact, the point may be
11 raised at any time, in the trial court or on appeal, by either the
12 parties or on the court's own motion. LaFortune v. Ebie (1972) 26
13 Cal.App.3d 72, 75; Lewis & Queen v. M.M. Ball Sons (1957) 48
14 Cal.2d 141, 147-148 ⁹/

15 The object of a contract must be lawful. Civil Code sections
16 1550, 1596. If the contract has a single object, and the object
17 is unlawful, the entire contract is void. Civil Code section
18 1598. It is an obstruction of justice to conceal or suppress
19 relevant evidence. Witkin, California Criminal Law (2d ed. 1988),
Vol. 2, section 1132, at p. 1311; Penal Code sections 136, 136.1
and 138; 18 U.S.C. § 201(b)(3); 18 U.S.C. § 201 (c)(2);
20 Williamson v. Superior Court (1978) 21 Cal.3d 829, 836-37; People
21 v. Pic'l (1982) 31 Cal.3d 731, 183 CR 685; Mary R. v. B&R
22 Corporation (1983) 149 Cal.App.3d 308, 196 CR 871. .

23 The underlying settlement agreement in this case is illegal
24 because it was designed to suppress facts discrediting
25 Scientology, which thus suppressed would obstruct justice. (See

26 ⁹ If the question of illegality develops during the course
27 of a trial, and when a court discovers a fact which indicates that
28 the contract involved is illegal and ought not to be enforced, the
court must instigate an inquiry in relation thereto. Thus,
whenever the evidence discloses the relations of the parties to
the transaction to be illegal and against public policy, it
becomes the duty of the court to refuse to entertain the action.
The disclosure is fatal to the case, and the court is justified in
rendering judgment that neither party take anything from the
other. Agran v. Shapiro (1954) 127 Cal.App.2d.Supp. 807, 273 P.2d
619, 631.

Part I-A, supra.)

In Brown v. Freese (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of discreditable facts. The court stated:

"A bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal. . . . In many cases falling within the rule stated in the section the bargain is illegal whether or not the threats go so far as to bring the case within the definition of duress. In some cases, moreover, disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily made. Nevertheless the bargain is illegal. Moreover, even though the offer to pay for nondisclosure is voluntarily made and though there is no duty to make disclosure or propriety in doing so, a bargain to pay for nondisclosure is illegal."

(Emphasis added.) Brown 28 Cal.App.2d at 618.

Thus, where a contract is made either (1) to achieve an illegal purpose, or (2) by means of consideration that is not legal, the contract itself is void. Witkin, Summary of California Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396.

Thus, the court will look through provisions that may appear valid on their face, and with the aid of parol evidence, determine that the contract is actually illegal or is part of an illegal transaction. Lewis & Quenn, 48 Cal.2d at 148; Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254; Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36; Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492; Fong v. Miller (1951) 105 Cal.App.2d 411, 414-15. Morey v. Paladini (1922) 187 Cal. 727, 738; Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454.

In Fong v. Miller, supra, enforcement of a settlement agreement was denied.

"Appellants bitterly complain that the court's action leaves Respondent unjustly enriched. The complaint is a familiar one, it is generally made by those who, deeming themselves wronged by their companion in illegal ventures, find themselves denied of any right to enforce their unlawful agreements. Their pleas have always been unavailing. This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest -- that of the public, whose welfare demands that certain transactions be discouraged."

1 Id. at 105 Cal.App.2d at pp. 414-415.

2 In Tappan v. Albany Brewing Co. (1989) 80 Cal. 570, 571-72
3 the California Supreme Court stated:

4 "It was contended by the Respondent that this was nothing
5 more than a payment of a sum of money by way of a **compromise of**
6 **litigation**, and that such contracts have been upheld. We do not
7 so construe the agreement. It was a promise to pay . . . for the
8 **concealment of a fact** from the court and the parties material to
9 the rights of said parties, and which it was her duty to make
10 known. Such a contract is against public policy."

11 What Scientology is seeking to do is to remove Armstrong, and
12 all others like him, ¹⁰/ from playing any role in the truth-
13 seeking process. ¹¹/

14 ¹⁰ Witnesses whose silence and testimony Scientology
15 purchased, in conjunction with its purchase of Armstrong's,
16 included Howard Schomer, Laurel Sullivan, Edward Walters, Nancy
17 Dincalcis and Kima Douglas. (See Exhibit C to "Exhibits To
18 Supplementary Opposition To Motion For Preliminary Injunction"
19 filed herein on 5/7/92.

20 Compare that the identities of the above identified
21 witnesses whose silence was purchased and are identical to those
22 whom Judge Breckenridge referred to as being "credible, extremely
23 persuasive . . . In all critical and important matters, their
24 testimony was precise, accurate, and rang true." (Exhibit A at
25 p. 7) They are the same.

26 ¹¹ For example, Scientology unsuccessfully attempted to
27 enforce identical settlement agreements against the Aznarans. See
28 Exhibit H for motion for preliminary injunction. For settlement
agreements, see Exhibit H-1 and H-2. The order denying the motion
for preliminary injunction in Aznaran is attached hereto as
Exhibit J. For an example of the type of information in the
Aznaran case that Scientology sought to suppress, see Declaration
of Vicki Aznaran at Exhibit I (Originally submitted herein as
Exhibit J to "Request for Judicial Notice of Documents By Amicus
Curiae Joseph A. Yanny, Declaration of Graham E. Berry and
Documents to Be Judicially Noticed" filed herein on May 11, 1992.
[at ¶ 12: **Personally destroyed evidence** ordered produced by Judge
Breckenridge in Armstrong I; at ¶¶ 13, 16-23: destruction of
evidence and other manipulations of judicial system.] It is
remarkably similar in the disclosure of Scientology's criminal
activities to Armstrong's Declarations. (See Exhibits A to H,
inclusive, to "Declarations of Gerald Armstrong filed in Support
of Amicus Curiae Brief of Joseph A. Yanny in Opposition to
Plaintiff's Order to Show Cause re Preliminary Injunction" filed
3/17/92 in Marin County and 4/13/92 in Los Angeles County as part
of the "Declaration of Graham E. Berry to All Evidence in Support
of Amended Amicus Curiae Brief in Opposition to Plaintiff's Order
to Show Cause re Preliminary Injunction, Exhibits A through BB to
(continued...)

Our civil system is more than just redress. It is a fact-finding tool, laying precedents for our lives, businesses and affairs. It governs product liability, due care, fraud, ^{12/} and safety. ^{13/} To enforce public policy and deterrence, we have punitive damages. Class action lawsuits help large segments of the public. Civil litigation presents safeguards and warnings against harmful and dangerous individuals, civil and governmental entities.

The injunction undermines the integrity of litigation. The truth is the truth and the suppression of the truth is ruthlessly anathema to the ascertainment of justice.

2. The Settlement Agreement Was Obtained By Fraud

Armstrong's former lawyer, Michael Flynn, is expected to testify ^{14/} at the contempt hearing on Armstrong's behalf that in order to induce Armstrong to settle Scientology attorney, Lawrence Heller and other Scientology counsel, represented that as L.Ron Hubbard had died in January 1986, Scientology, having repudiated

¹¹(...continued)
the Declaration of Graham E. Berry in Support of Amicus Curiae Brief," filed in Marin County on 3/17/92 and herein on April 13, 1992.)

¹² For example, in the area of cult-related litigation, Justice Mosk condemned the Moonies' "deceptive recruitment practices . . . posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion [brainwashing]." Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, 1118, 252 CR 122.

¹³ Similarly, Scientology's coercive retributive practice known as "Fair Game" has been condemned as a "modern day 'inquisition'" requiring the imposition of civil liability. Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, 888-89, pet. for cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298 (1991); aff'd on remand 4 Cal.App.4th 1074 (1992); review granted on other grounds S011790 (1992).

¹⁴ Having signed a settlement agreement himself with Scientology, Flynn is unable to provide a declaration for fear of being the subject of a lawsuit and injunction as has Armstrong here.

1 the practices of "Black PR [Public Relations]" ¹⁵/ and "Fair
 2 Game," ¹⁶/ and disbanded the notorious Guardian's Office, ¹⁷/ had
 3 reformed its antisocial practices and policies. Based upon these
 4 representations to Armstrong's counsel, which were relayed to
 5 Armstrong, Armstrong settled. These representations were false
 6 inasmuch as Scientology never ceased its Black PR and Fair Game.
 7 Armstrong hereby incorporates the authority cited in his General
 8 Objection ("Gen. Obj.") No. 1 to the sufficiency of the affidavit.

3. The Injunction Is Fatally Ambiguous

Armstrong is enjoined from "directly or indirectly . . .

¹⁵ See, Declaration of Jerry Whitfield Submitted in
 Opposition to Order to Show Cause re Contempt, ¶ 8. Whitfield's
 declaration was necessitated by and in direct response to
 Scientologist and Scientology attorney, Laurie J. Bartilson's,
 "Black PR" statement that he is "a self-proclaimed 'specialist' in
 the 'deprogramming' of Church of Scientology parishioners . . .
 [Armstrong supplied] Whitfield with a videotape for Whitfield's
 use in forcible deprogrammings to force unwilling Scientologists
 to renounce their faith . . ." (Points and Authorities in Support
 of Order to Show Cause at p. 9:2-14.)

¹⁶ That the imposition of the Fair Game Policy is currently
 practiced is clearly revealed by Scientology's "attempt to ruin
 FORD GREENE on a personal and professional basis because of his
 activities on behalf of the Cult Awareness Network, his outspoken
 and public criticism of SCIENTOLOGY, his representation of former
 Scientologists, particularly Richard and Vicki Aznaran, and his
 current working relationship with GERALD ARMSTRONG, a former high-
 ranking Scientologist." Declaration of Garry L. Scarff In
 Opposition to OSC re Contempt, at ¶ 3. Scientology's scheme has
 included the rifling of the legal files of his clients in his
 office, the spread of rumors of drug trafficking, the portrayal of
 Greene as a sex fiend who trades homosexual sex favors in return
 for legal representation, as a homosexual rapist, as being
 infected with the AIDS virus, the filing of complaints with the
 State Bar, and the severing of the brake lines to his car. Id at
 ¶¶ 4-7. Such plans have been coordinated by Bowles and Moxon
 partners and Scientologists, TIMOTHY BOWLES and KENDRICK MOXON.
Id. at ¶¶ 7 & 8.

¹⁷ See, United States v. Heldt (1981) 668 F.2d 1238, 1247,
cert. denied (1982) 102 S.Ct. 1971. ["The Guardian's Office is
 charged with the protection of Scientology. The Guardians handle
 intelligence matters including covert operations to acquire
 Government documents critical of Scientology, internal security
 within Scientology, and covert operations to discredit and remove
 from positions of power all persons whom Scientology considers to
 be its enemies."]

1 voluntarily assisting" individuals intending to make or litigate a
 2 claim against Scientology regarding said claim, voluntarily
 3 assisting such persons arbitrating or litigating a claim against
 4 Scientology, but is not prohibited from "being reasonably
 5 available for the service of subpoenas on him", testifying
 6 truthfully, disclosing criminal conduct of Scientology to
 7 authorities, and "engaging in gainful employment rendering
 8 clerical or paralegal services not contrary to the terms and
 9 conditions of this order."

10 Gerald Armstrong works for Ford Greene. Greene litigates
 11 against Scientology. Does the mere fact of Armstrong's employment
 12 by Greene constitute assistance within the terms of the
 13 injunction? Is Armstrong in violation of the order when he works
 14 on non-Scientology cases, because in so helping Greene carry his
 15 case load he enables Greene to dedicate more time litigating
 16 against Scientology? In other words by being a live, breathing
 17 body in Greene's office providing assistance in non-Scientology
 18 cases does Armstrong provide "indirect assistance" in Scientology
 19 cases? Is Armstrong in violation of the injunction when he
 20 answers the phone and somebody suing Scientology is on the other
 21 end? If Armstrong orders office supplies some of which will be
 22 used in anti-Scientology litigation, is he in violation? If
 23 Armstrong handles outgoing Scientology-related mail? Opens an
 24 envelope from Bowles and Moxon? Licks a stamp to be placed on a
 25 letter to an anti-Scientology litigant? Goes to the post office?
 26 Assembles exhibits to a brief opposing a Scientology motion?
 27 Signs a proof of service when Mr. Greene is out of town?

28 How is Armstrong to ascertain what and who are "all
 29 Scientology and Scientology affiliated organizations and entities
 30 and their officers, agents, representatives, employees,
 31 volunteers, directors, successors, assigns and legal counsel[?]"
 32 Is he required to interview each person he does not know in order
 33 to determine whether or not such person is affiliated with a
 34 Scientology-related organization. Since the injunction is not
 35 clear about what Armstrong can or cannot do, however, this
 36 provision is vague and unclear. It restricts his employment.
 37 Armstrong hereby incorporates the authority cited in Gen. Obj. No.

3 as though it were fully set forth.

4. **Scientology Should Be Judicially Estopped
From Asserting Armstrong's Performance Of Routine
Clerical And Paralegal Duties In Scientology
Litigation Violates The Injunction**

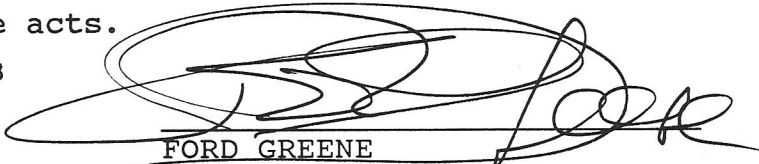
During the course of his July 22, 1992 session of Mr. Armstrong's deposition, Mr. Wilson advised him that the performance of routine clerical and paralegal duties were not considered to be violations of a reasonable reading of the injunction. (See, Exhibit K, at pp. 190:2-191:15, 197:3-198:10, 199:19-200:6; see also Part II-B, supra.)

Under the doctrine of judicial estoppel "a party who has assumed a particular position in litigation may under some circumstances be estopped from taking an inconsistent position to the detriment of the other party." Ng v. Hudson (1977) 75 Cal.App.3d 250, 258, 142 CR 69. Judicial estoppel ". . . prevents a party who has assumed a particular position in a judicial proceeding to assume an inconsistent position to the prejudice of the adverse party in a subsequent proceeding involving the same parties and questions. . . The position must be clearly inconsistent so that one necessarily excludes the other. The application has also sometimes been limited by the requirement that to permit one party to change must be unjust to the other party."

Coleman v. Southern Pacific Company (1956) 141 Cal.App.2d 121, 296 P.2d 386, 391. Primarily, what is required is that the party against whom the estoppel would be invoked "plays 'fast and loose with the courts' by 'intentional self-contradiction . . . as a means of obtaining unfair advantage.'" Id., 296 P.2d at 392.

Based upon Mr. Wilson's comments to the court that Armstrong should not be enjoined from performed clerical and paralegal duties that could be routinely performed and which were not connection with the knowledge that Armstrong had gained while a Scientologist, in conjunction with his statements of the record to Armstrong during the course of his deposition, Scientology should be estopped from now seeking to have this court hold Armstrong in contempt for doing the same acts.

DATED: February 24, 1993


FORD GREENE

Attorney for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO ORDER TO SHOW CAUSE RE CONTEMPT [Supplemental] on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

By Fax

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Hand

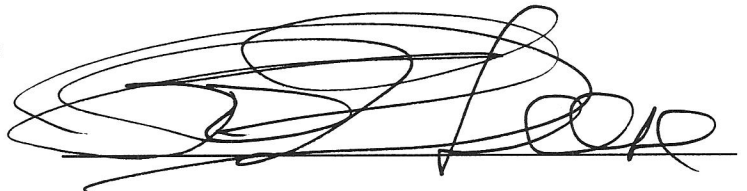
PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

☒ (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

☒ (Personal) I caused said papers to be personally service on the office of opposing counsel.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: February 25, 1993



1 Andrew H. Wilson
 2 WILSON, RYAN & CAMPILONGO
 3 235 Montgomery Street
 4 Suite 450
 5 San Francisco, California 94104
 6 (415) 391-3900

7 Laurie J. Bartilson
 8 BOWLES & MOXON
 9 6255 Sunset Boulevard, Suite 2000
 10 Hollywood, CA 90028
 11 (213) 661-4030

12 Attorneys for Plaintiff
 13 CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
 LOS ANGELES SUPERIOR COURT

MAR 0 1 1993

JAMES H. DEWOLLEY, CLERK
 BY INNA R. MATTHEWS, DEPUTY

FILED

NOV 16 1994

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

11 CHURCH OF SCIENTOLOGY
 12 INTERNATIONAL, a California
 13 not-for-profit religious
 14 corporation,

Plaintiff,

vs.

16 GERALD ARMSTRONG and DOES 1
 17 through 25, inclusive,
 18 Defendants.

CASE NO. BC 052395

NOTICE OF DEFENDANT'S FAILURE
 TO OPPOSE PLAINTIFF'S MOTION
 IN LIMINE

DATE: March 2, 1993

TIME: 8:30 a.m.

DEPT: 86

DISCOVERY CUTOFF: None

MOTION CUTOFF: None

TRIAL DATE: May 3, 1993

21 Plaintiff, Church of Scientology International, hereby gives
 22 notice that Defendant Gerald Armstrong has not filed or served an
 23 Opposition to Plaintiff's Motion in Limine to Exclude Evidence of
 24 Alleged Actions of Plaintiff or Others Which Predate the Order
 25 Violated by Armstrong at Trial of OSC re Contempt Issued Against
 26 Defendant Gerald Armstrong.

27 Plaintiff filed its Motion in Limine on February 1, 1993.
 28 The motion was initially set for hearing on February 16, 1993.

1 When the date of the hearing on the Order to Show Cause why
2 Gerald Armstrong should not be held in contempt was moved from
3 February 16 to March 2, 1993, counsel for plaintiff agreed with
4 defendant's counsel's request to move the hearing on the motion
5 in limine to March as well.

6 In accordance with the latter date, Defendant's Opposition
7 was due on February 24, 1993. No Opposition has been received by
8 any of Plaintiff's counsel, nor has a copy been filed with this
9 Court. Further, Defendant's counsel has not communicated to
10 counsel for Plaintiff regarding his failure to oppose the motion
11 in limine.

12 Consequently Plaintiff herewith provides notice to the Court
13 that Defendant has not opposed Plaintiff's Motion in Limine to
14 Exclude Evidence of Alleged Actions of Plaintiff or Others Which
15 Predate the Order Violated by Armstrong at Trial of OSC Re
16 Contempt Issued Against Defendant Gerald Armstrong and requests
17 that said motion be granted, unopposed.

18 DATED: February 26, 1993

Respectfully submitted,

19 Andrew H. Wilson
20 WILSON, RYAN & CAMPILONGO

21 By: Laurie J. Bartilson *HL*
22 Laurie J. Bartilson

23 Attorneys for Plaintiff
24 CHURCH OF SCIENTOLOGY
25 INTERNATIONAL
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On February 26, 1993, I served the foregoing document described as NOTICE OF DEFENDANT'S FAILURE TO OPPOSE PLAINTIFF'S MOTION IN LIMINE on interested parties in this action

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

FORD GREENE **By FAX and U.S. Mail**
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

PAUL MORANTZ **By FAX and U.S. Mail**
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of

deposit for mailing in affidavit.

Executed on February 26, 1993 at Los Angeles, California.

- [] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 1993, at Los Angeles, California.

- [X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

- [] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul Bedford

Type or Print Name

Paul Bedford

Signature

- * (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

- ** (For personal service signature must be that of messenger)

1 Andrew H. Wilson
 2 WILSON, RYAN & CAMPILONGO
 3 235 Montgomery Street
 4 Suite 450
 5 San Francisco, California 94104
 6 (415) 391-3900

7 Laurie J. Bartilson
 8 BOWLES & MOXON
 9 6255 Sunset Boulevard, Suite 2000
 10 Hollywood, CA 90028
 11 (213) 661-4030

12 Attorneys for Plaintiff
 13 CHURCH OF SCIENTOLOGY
 14 INTERNATIONAL

FILED
 LOS ANGELES SUPERIOR COURT

MAR 0 1 1993

JAMES H. DEMPSEY, CLERK
 BY DINA R. MATTHEWS, DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE COUNTY OF LOS ANGELES

12 CHURCH OF SCIENTOLOGY)
 13 INTERNATIONAL, a California not-for-profit)
 14 religious corporation,)

15 Plaintiff,

157680
 CASE NO. BC 052395

PLAINTIFF'S EX PARTE
 APPLICATION FOR LEAVE TO
 LATE FILE REPLY TO
 DEFENDANT'S OPPOSITION TO
 ORDER TO SHOW CAUSE;
 DECLARATION OF LAURIE J.
 BARTILSON IN SUPPORT
 THEREOF

DATE: March 1, 1993
 TIME: 8:30 a.m.
 DEPT: 86

DISC. CUT-OFF: Apr. 2, 1993
 MTN CUT-OFF: Apr. 19, 1993
 TRIAL DATE: May 3, 1993

19 GERALD ARMSTRONG; DOES 1 through
 20 25, inclusive,

21 Defendants.

22 TO DEFENDANT AND GERALD ARMSTRONG AND HIS COUNSEL OF
 23 RECORD:

24 Notice is hereby given that on March 1, 1993 at 8:30 a.m., or as soon
 25 thereafter as the matter may be heard, in Department 86 of the above-entitled
 26 court, located at 111 North Hill Street, Los Angeles, California 90012, plaintiff
 27 Church of Scientology International ("Church") will and hereby does move for an
 28

FILED

NOV 16 1994

HOWARD HANSON vs.
 MARIN COUNTY CLERK

DEPUTY

1 order permitting plaintiff to serve and file its Reply to Defendant's Opposition to
2 Order to Show Cause on March 1, 1993.

3 This application is made on the basis that (1) plaintiff's counsel did not
4 receive a complete set of the papers filed by defendant in opposition to the Order
5 to Show Cause until the afternoon of Thursday, February 25, 1993, the day before
6 plaintiff's reply was due to be filed with the Court, and (2) plaintiff's counsel was
7 unable to complete and file the Reply on Friday, February 26, 1993, because the
8 sudden illness of a family member kept her out of the office the entire day.

9 This application is based upon this application, the attached declaration of
10 Laurie J. Bartilson, the pleadings and papers on file herein and such other and
11 further matters as may properly be before the Court.

12 Dated: March 1, 1993

Respectfully submitted,

13 Andrew H. Wilson
14 WILSON, RYAN & CAMPILONGO

15 BOWLES & MOXON

16
17 By:


Laurie J. Bartilson

18 Attorneys for Plaintiff
19 CHURCH OF SCIENTOLOGY
20 INTERNATIONAL
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DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby depose and state:

1. I am an attorney, licensed to practice law in the State of California. I am a partner in the law firm of Bowles & Moxon and am counsel of record for plaintiff Church of Scientology International in the above referenced action. I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On Thursday, February 25, 1993, in the afternoon, my office received for the first time a complete set of the documents which defendant Gerald Armstrong filed in response to the Order to Show Cause Re: Contempt issued by this Court on December 31, 1992.

3. I am the attorney on this case primarily responsible for preparing the Reply to Armstrong's Opposition. I worked on the Reply on February 25, intending to finish and file it on February 26, 1992, which was two court days prior to the scheduled hearing date.

4. On the evening of February 25, my elderly father arrived at my home. He resides in Minnesota, and is here for a visit. On the evening of February 25, he suffered a severe asthma attack, requiring me to take him to the emergency room of Verdugo Hills hospital. The attack recurred the next day, and I was required to spend virtually the entire day taking my father to the doctor and having further tests done at the hospital. For this reason I was unable to come into my office and finish the Reply.

5. My co-counsel in this case, Andrew Wilson, is a San Francisco attorney. With the shortened service of the opposition, he was unable to take my place in the preparation and filing of the Reply.

6. I instructed my paralegal to send Armstrong's attorney a letter by telecopier on the morning of February 26, informing him that I would be bringing this ex parte application. A true and correct copy of the letter which was sent to

1 Mr. Greene by telecopier is attached hereto as Exhibit A.

2 I declare under the penalty of perjury that the foregoing is true and correct.

3 Executed this 1st day of March, 1993 at Los Angeles, California.

4
5 
6 LAURIE J. BARTILSON
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28

BOWLES & MOXON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

1015

TIMOTHY BOWLES *
KENDRICK L. MOXON ±
LAURIE J. BARTILSON †
HELENA K. KOBRIN ‡

(213) 661-4030
TELECOPIER (213) 662-6419

PETER M. JACOBS
RANDALL A. SPENCER §
JAMES J. JACKSON
ROBERT A. WIENER #
LESLIE T.W. SOASH

* ALSO ADMITTED IN OREGON
± ALSO ADMITTED IN THE DISTRICT OF COLUMBIA
† ALSO ADMITTED IN MASSACHUSETTS
‡ ALSO ADMITTED IN FLORIDA
§ ALSO ADMITTED IN ILLINOIS
ALSO ADMITTED IN OKLAHOMA

OF COUNSEL
JEANNE M. GAVIGAN
MARCELLO M. DI MAURO
KAREN L. BROWN
KAREN D. HOLLY

February 26, 1993

BY TELEFAX AND U.S. MAIL

Ford Greene
HUB LAW OFFICES
711 Sir Frances Drake Boulevard
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Armstrong

Dear Mr. Greene:

I am writing to inform you that I will be going in ex parte on Monday morning to request the Court's permission to file CSI's Reply in Support of the Motion to Compel at that time.

Over this last week I have been out of town visiting family and was accompanied home by my father. He became severely ill last night, requiring emergency medical attention. Today he is out of the hospital, however, he requires continuing medical attention and I am not able to leave him to return to the office today.

Sincerely,

Laurie J. Bartilson
Laurie J. Bartilson *by lam*

[DICTATED BUT NOT READ]

LJB:lam

PROOF OF SERVICE

1016

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On MARCH 1, 1993, I served the foregoing document described as PLAINTIFF'S EX PARTE APPLICATION FOR LEAVE TO LATE FILE REPLY TO DEFENDANT'S OPPOSITION TO ORDER TO SHOW CAUSE; DECLARATION OF LAURIE J. BARTILSON IN SUPPORT THEREOF on interested parties in this action by

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Ford Greene **BY FAX and US MAIL**
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 1, 1992, at Los Angeles, California.

- [] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the addressee.

Executed on _____, 1993, at Los Angeles, California.

- [X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

- [] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul Bedford
Type or Print Name

Paul Bedford
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

1018

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On March 1, 1993 I served the foregoing document described as PLAINTIFF'S EX PARTE APPLICATION FOR LEAVE TO LATE FILE REPLY TO DEFENDANT'S OPPOSITION TO ORDER TO SHOW CAUSE; DECLARATION OF LAURIE J. BARTILSON IN SUPPORT THEREOF on interested parties in this action by

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Paul Morantz
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 1, 1993, at Los Angeles, California.

- [] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 1992, at Los Angeles, California.

- [X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

- [] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul Bradford
Type or Print Name

Paul Bradford
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

1 Andrew H. Wilson
2 WILSON, RYAN & CAMPILONGO
3 235 Montgomery Street
4 Suite 450
5 San Francisco, California 94104
6 (415) 391-3900

7 Laurie J. Bartilson
8 BOWLES & MOXON
9 6255 Sunset Boulevard, Suite 2000
10 Hollywood, CA 90028
11 (213) 661-4030

12 Attorneys for Plaintiff
13 CHURCH OF SCIENTOLOGY
14 INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 CHURCH OF SCIENTOLOGY)
18 INTERNATIONAL, a California not-for-profit)
19 religious corporation,)

20 Plaintiff,

21 vs.

22 GERALD ARMSTRONG; DOES 1 through)
23 25, inclusive,)

24 Defendants.)

25 CASE NO. BC 052395

26 PLAINTIFF'S REPLY TO
27 DEFENDANT'S OPPOSITION TO
28 ORDER TO SHOW CAUSE WHY
GERALD ARMSTRONG SHALL
NOT BE HELD IN CONTEMPT OF
COURT

DATE: March 2, 1993
TIME: 8:30 a.m.
DEPT: 86

DISC. CUT-OFF: Apr. 2, 1993
MTN CUT-OFF: Apr. 17, 1993
TRIAL DATE: May 3, 1993

FILED

NOV 16 1994
HOWARD HANSEN
MARIN COUNTY

[Handwritten signature]

1020

FILED

FEB 26 1993

AMES H. DEMPSEY, CL.

[Handwritten signature]

I. INTRODUCTION

Defendant Gerald Armstrong ("Armstrong") has submitted an incredible amount of paper in opposition to the OSC issued by Judge Sohigian re Armstrong's contemptuous disregard of his order, and he has asked the Court to consider, by incorporation, literally thousands of additional pages. What is most notable from this voluminous submission, however, is not what it says, but what it does not say. Armstrong rails vigorously against his former Church, its attorneys, his own former attorneys, judges who have ruled against him, and the Settlement Agreement wherein he accepted \$800,000 as settlement of all of his claims -- but not once does he raise a single fact to dispute plaintiff's clear showing that he has deliberately and repeatedly violated the Court's Order of May 28, 1992 ("the Order"). Indeed, Armstrong's opposition does not dispute that he has engaged in the conduct alleged by the Church, nor does Armstrong argue that such acts do not violate Judge Sohigian's Order.

Instead of responding to the motion actually before the Court, Armstrong is attempting to relitigate issues already decided against him. The enforceability of the Agreement is not in dispute in these proceedings. Judge Sohigian has already ruled that it can be enforced by preliminary injunction; Judge Horowitz has already ruled that it cannot be invalidated by demurrer. Armstrong's attempts to obtain writs from the Court of Appeal concerning both of these rulings were rejected.¹ Indeed, as demonstrated below, every court that has considered the Agreement, or agreements similar to this one, has upheld it as perfectly valid and enforceable. Armstrong's collateral attack on the Agreement should be rejected.

Armstrong's attack on the Order itself is equally devoid of merit. In a carefully reasoned opinion, Judge Sohigian set forth clearly and distinctly those things which

¹ Armstrong has appealed the Order, but the pendency of the appeal neither stays the order nor excuses his deliberate disobedience.

1 Armstrong could not do on pain of contempt. Armstrong has done them anyway. No
2 amount of twisting, weaving, alteration of facts or ad hominem attacks on plaintiff
3 and its counsel can change that. The Order is clear on its face, and Armstrong has
4 violated it. The Judge issuing the Order issued the OSC after careful review of
5 plaintiff's evidence. Armstrong is guilty of contempt.

6 II. ARMSTRONG IS GUILTY OF CONTEMPT

7 Plaintiff's Moving Papers, and the Declaration of Laurie J. Bartilson, set forth
8 clearly the evidence which Armstrong must refute to avoid a finding of contempt. He
9 has refuted none of it. Vicious and irrelevant attacks on the Church and its counsel,
10 the Court and the Order all abound in Armstrong's papers -- but those same papers
11 contain not one word demonstrating that Armstrong did not take the actions
12 complained of, or showing that those actions do not constitute contempt.

13 Less than a month after the May 28 Order was issued, Armstrong asserted under
14 oath in deposition that he would not honor its terms:

15 I have absolutely no intention of honoring that settlement
16 agreement. I cannot. I cannot logically. I cannot ethically. I cannot
17 morally. I cannot psychically. I cannot philosophically. I cannot
spiritually. I cannot in any way. And it is firmly my intention to not
honor it.

18 Q. No matter what a court says?

19 A. No court can order it. They're going to have to kill me.

20 [Exhibit F to Moving Papers, p. 124.]

21 Armstrong's actions have matched his avowed intentions. Working in Mr.
22 Greene's office, he has admitted, under oath, that he violated the Order by "broadly
23 discussing" their case with Vicki and Richard Aznaran, aiding Greene in the
24 preparation of motions and documents for filing in the Aznarans' case, and
25 interviewing other persons intending to litigate against the Church, concerning the
26 substance of their cases, one of them at least seven times. Indeed, Armstrong's "aid"
27 of one of these claimants was so extensive that Armstrong claims to be the "only
28 person in the world" willing to help him. [Ex. G to Moving Papers, p. 7.] As if to

1 prove this point, Armstrong has personally made a settlement demand to Church
 2 counsel on his behalf.² Moreover, on November 6, 1992, Armstrong made a lengthy
 3 videotape which he specifically intended to be used by deprogrammer Jerry Whitfield³
 4 to dissuade Scientologists from practicing their faith, and to convince them to press
 5 frivolous claims against the Church.

6 **III. ARMSTRONG'S COLLATERAL ATTACK ON THE AGREEMENT**
 7 **MUST BE REJECTED**

8 **A. Armstrong May Not Use These Proceedings As A**
 9 **Collateral Attack On The Order Which He Has Disobeyed**

10 In opposition to CSI's Motion for Preliminary Injunction, Armstrong argued, as
 11 he does here, that the Settlement Agreement is illegal and obtained by fraud. During
 12 a two-day hearing, Judge Sohigian meticulously considered and rejected each and
 13 every one of the numerous challenges to the Agreement which Armstrong seeks to
 14 relitigate now. Then, as now, Armstrong asserted that provisions of the Agreement

15 ² Armstrong's unsupported claim that plaintiff is seeking to find him in
 16 contempt for performing "clerical" duties rings very hollow when it is compared to
 17 Armstrong's actual testimony. In deposition, Armstrong repeatedly refused to
 18 answer questions concerning his activities on behalf of Greene's anti-Scientology
 19 clients by asserting that his conduct was attorney-client privileged. Obviously, no
 20 privilege attaches to stapling pages together and the like. Having asserted the
 21 privilege, Armstrong cannot now assert that his actions were something
 22 innocuous, and not privileged. Claims of privilege cannot be selectively used by
 23 litigants as both a sword and a shield. Dwyer v. Crocker National Bank (1987) 194
 24 Cal.App.3d 1418, 1432, 240 Cal.Rptr. 297, 304.

25 ³ In his opposing declaration, Whitfield disagrees with the appellation "self-
 26 proclaimed deprogrammer," insisting that it is a term he never uses to describe
 27 himself. Plaintiff apologizes. A review of Whitfield's advertising reveals, indeed,
 28 that he chooses to euphemistically term himself an "exit counselor" who performs
 "interventions." [Ex. A.] Whitfield preys on families of Scientologists, charging
 them \$1,500 per day, plus expenses, for his "interventions," which, according to
 Whitfield, "take five to seven days." [Id.] It is Whitfield's would-be victims who
 refer to Whitfield's activities as "deprogramming," and who describe in detail the
 suffering which they have experienced during his attempted "interventions." See,
e.g., Declaration of Mary Ann Buck; Declaration of John F. Warren; Declaration of
 William Truax; and Declaration of Kevin Hulce. [Ex. B.]

1 were illegal, that the Agreement violated public policy, that enforcing the Agreement
2 would violate his First Amendment and other constitutional rights, that the Agreement
3 included provision for a "collusive" appeal, and that he had been defrauded by his own
4 lawyer into entering into the Agreement.

5 On May 28, 1992, after granting Armstrong a full hearing on these same
6 assertions, Judge Sohigian issued a carefully crafted Order which granted part of the
7 Church's application. Notably, Judge Sohigian reiterated in his Order that he had,

8 ... properly balance[d] and accommodate[d] the policies
9 inherent in: (a) the protectable interests of the parties in
10 this suit; (b) the protectable interests of the public at large;
11 (c) the goal of attaining full and impartial justice through
12 legitimate and properly informed civil and criminal judicial
13 proceedings and arbitrations; (d) the gravity of interest
involved in what the record demonstrates defendant might
communicate in derogation of the contractual language;
and (e) the reasonable interpretation of the "Mutual Release
of All Claims and Settlement Agreement" of December,
1986.

14 Judge Sohigian also stressed that "[Armstrong] was substantially compensated
15 as an aspect of the agreement," and that the record did not "persuasively support
16 defendant's claim of duress or that the issues involved in this preliminary injunction
17 proceeding were precluded by any prior decision." Moreover, the Court acknowledged
18 that "[l]itigants have a substantial range of contractual freedom, even to the extent
19 of agreeing not to assert or exercise rights which they may otherwise have," because
20 "[t]he law appropriately favors settlement agreements."

21 In California Retail Liquor Dealers Institute v. United Farm Workers (1976) 57
22 Cal.App.3d 606, UFW appealed from a preliminary injunction placing limits upon the
23 picketing of stores on the ground it was unconstitutionally overbroad and that it
24 prohibited lawful activity under the First Amendment. In upholding the injunction, the
25 Court recognized that an order "couched in the narrowest terms" may accomplish the
26 objective permitted by constitutional mandate and still meet the essential needs of the
27 public order.

28 The present injunction effectively accomplishes the same kind of goal. It took

1 into consideration the public policy of freedom of contract, addressed Armstrong's
2 arguments and accordingly rejected certain portions of the Settlement Agreement, and
3 yet left intact those provisions which it deemed appropriate after balancing all relevant
4 factors.

5 Even if Armstrong and his attorney believe the Order to be erroneous or invalid,
6 they are not free to simply and contemptuously disregard it. Indeed, the United
7 States Supreme Court has rejected the very same form of collateral attack which
8 Armstrong attempts herein to excuse his contempt of Judge Sohigian's Order. In
9 Walker v. City of Birmingham (1967) 388 U.S. 308 [Ex. C], the Supreme Court
10 affirmed criminal contempt convictions of several persons who had defied a state
11 court injunction prohibiting violation of a local city parade ordinance. In appealing
12 their contempt citation, the petitioners challenged the constitutionality of the
13 ordinance as well as the breadth and vagueness of the injunction itself. The
14 petitioners, just like Armstrong here, asserted that these deficiencies freed them to
15 disobey the injunction. However, the Supreme Court rejected this rationale, noting
16 that the petitioners had been afforded the opportunity to seek to modify or dissolve
17 the injunction prior to their acts of disobedience. The Court stressed that "in the fair
18 administration of justice no man can be judge in his own case" and that "respect for
19 judicial process is a small price to pay for the civilizing hand of law, which alone can
20 give abiding meaning to constitutional freedom." 388 U.S. 308 at 321.

21 Contempt citations have been similarly upheld by the California courts. In In re
22 Jackson (1985) 170 Cal.App.3d 505, 775, 778, 216 Cal.Rptr. 539, 541, for
23 example, the court ordered an attorney to continue representation of a client, despite
24 the request of the attorney to be relieved. The attorney did not seek modification of
25 the order or appeal it; he chose to simply disobey it. The trial court found him to be
26 in contempt, and imposed a jail sentence. The Court of Appeal upheld the contempt
27 conviction, stating "[o]nce a court has jurisdiction and makes a ruling, an attorney has
28 a duty 'to respectfully yield to the rulings of the court, whether right or wrong.' '[I]f

1 the ruling is adverse, it is not counsel's right to resist it or to insult the judge -- his
2 right is only respectfully to preserve his point for appeal.'" Id. (citations omitted,
3 emphasis in original.) Here, Armstrong made no effort to have the Order modified or
4 dissolved; he has filed an appeal, but has even delayed that appeal by seeking and
5 obtaining multiple extensions of the time in which to file his opening brief. [Exs. D, E.]
6 While that appeal is pending, Armstrong, like Jackson, has no right to disobey the
7 injunction, or to insult the Court which issued it.

8 Armstrong erroneously asserts that this Court's injunctive order may be
9 collaterally attacked. His reliance on In Re Blaze (1969) 271 Cal.App.2d 210, In re
10 Misener (1985) 38 Cal.3d 573, Sorenson v. Superior Court (1969) 169 Cal.App.2d
11 73 and Hunter v. Superior Court (1939) 36 Cal.App.2d 100 in support of that
12 contention is misplaced. Those cases involve appeals or writs of habeas corpus or
13 prohibition attacking the contempt orders, not injunctive orders, on the grounds of
14 ambiguity or unconstitutionality. This Court already considered all of Armstrong's
15 assorted claims of illegality and fraud and fashioned the Order in its narrowest terms
16 to accommodate all the policies inherent in determining the scope of an injunction.
17 Armstrong is not without his remedies. In fact, he has filed his appeal from the
18 injunctive order. He cannot now be allowed to disobey this Court's Order in reliance
19 on issues already considered in issuing the injunction.

20 B. Armstrong's Arguments Concerning The Agreement Have Been
21 Rejected By Every Court Which Has Considered Them

22 Armstrong has argued that there is a "disagreement" between judges of this
23 Court concerning the validity of the Agreement, and asks that on that basis this Court
24 refuse to enforce the Order issued by Judge Sohigian. In fact, no such
25 "disagreement" exists. Three judges have considered Armstrong's arguments
26 concerning the validity of the Agreement, and all three have rejected them, in this
27 case:

- 28 ○ The first rejection of Armstrong's arguments came on March 20, 1992. On

1 that date, plaintiff's motion for preliminary injunction came on for hearing by Judge
 2 Dufficy, of the Marin Superior Court. Armstrong made the same arguments to Judge
 3 Dufficy which he makes here concerning the Agreement. Judge Dufficy heard
 4 argument concerning the injunction for nearly an hour, reviewed all of the voluminous
 5 submissions filed by Armstrong, and issued a temporary restraining order upholding
 6 the provisions of the Agreement while the transfer of this case to Los Angeles was
 7 pending [Ex. F];

8 ○ The **second** rejection of Armstrong's arguments came on May 28, 1992,
 9 when Judge Sohigian took evidence and heard argument for two days before issuing
 10 the preliminary injunction. Armstrong again raised all of the arguments concerning the
 11 Agreement which he makes in his opposition to the instant motion. Judge Sohigian
 12 specifically found that plaintiff had shown a substantial probability of success on the
 13 merits, and that the Agreement did not violate public policy [Ex. A to Moving Papers];

14 ○ The **third** rejection of Armstrong's arguments occurred on July 2, 1992.
 15 Armstrong demurred to the complaint herein, urging the Court to find that the
 16 Agreement could not be enforced, and raising yet again all of the arguments made
 17 here. Judge Horowitz rejected Armstrong's demurrer [Ex. G].⁴

18 Not only have three judges already held, in this case, that the Agreement's

19
 20 ⁴ Armstrong's claim that Judge Geernaert had previously ruled in an opposite
 21 manner on the enforceability of the Agreement is a misrepresentation of Judge
 22 Geernaert's ruling. It is plain from a review of the full transcript of the hearing
 23 quoted out of context by Armstrong that Judge Geernaert never considered factual
 and legal issues concerning the Agreement and certainly made no findings on their
 merits. Indeed, in a hearing in April, 1992, Judge Geernaert confirmed that he had
 made no factual findings, such as those now asserted by Armstrong, stating:

24 I have not made any ruling or decision based on a breach
 25 of contract case. All I decided was the law applying to
 26 the controversy as to whether or not it could be enforced
 27 under 664.6 or that other Code section, and both of
 those were premised on there being a prior Court order....
 I certainly didn't intend any of my analysis to be a factual
 finding.

28 [Ex. H, Transcript of Proceedings, April 28, 1992, pp. 21-22.]

1 provisions are entirely legal, two other courts have recently upheld similar provisions
2 in agreements entered into with other individuals with whom Church of Scientology
3 entities settled in 1986. In Wakefield v. Church of Scientology of California (11th Cir.
4 1991) 938 F.2d 1226, 1227 [Ex. I], settlement terms requiring confidentiality, which
5 were substantially similar to the terms which plaintiff seeks to enforce here, were
6 upheld by the district court and a criminal contempt citation was recommended by the
7 magistrate judge for violations. These decisions were discussed with approval by the
8 Eleventh Circuit Court of Appeals.⁵ Similarly, in McLean v. Church of Scientology of
9 California (11th Cir. 1991) [Slip Op., Ex. J, at 2, 3, 6] the Church obtained a
10 permanent injunction against Nan McLean from the district court for violating, inter
11 alia, similar confidentiality provisions of a settlement agreement which was upheld by
12 the Court of Appeals.⁶ These decisions - including three in this very case - refute

14 ⁵ While the district court files of Wakefield are sealed, the Eleventh Circuit's
15 opinion makes it clear that the District Court considered and approved in full
16 Wakefield's settlement agreement, which contained the very confidentiality
provisions against which Armstrong rails:

17 Margery Wakefield and three other plaintiffs alleged that the
18 Church of Scientology of California (the Church) committed various
19 wrongful acts against them. On August 14, 1986, Wakefield, the
20 other plaintiffs, and the Church entered into a settlement agreement
21 which included provisions enjoining Wakefield and the other plaintiffs
22 from discussing, with other than immediate family members, (1) the
substance of their complaints against the Church, (2) the substance of
their claims against the Church, (3) alleged wrongs the Church
committed, and (4) the contents of documents returned to the
Church. The district court approved the settlement agreement, sealed
the court files, and dismissed the case with prejudice.

24 ⁶ These provisions are also similar to provisions of a settlement upheld in
25 Hoffman v. United Telecommunications, Inc. (D.Kan. 1988) 687 F.Supp. 1512.
26 Hoffman [Ex. K] involving a confidential settlement agreement between a
27 defendant-employer and plaintiff-employee in an employment discrimination case,
28 which prohibited the employee or her counsel from any further participation in the
case, except that the employee could testify pursuant to subpoena. The Equal
Employment Opportunity Commission (EEOC) moved to have the agreement

(continued...)

utterly Armstrong's arguments that the Agreement's provisions are illegal, void or against public policy. The only courts that have considered these or similar agreements have easily found them to be enforceable.

C. Armstrong's Attack On The Making Of The Agreement Must Be Rejected

In opposing the entry of a preliminary injunction, Armstrong argued that his own lawyer had advised him that he could disregard the Settlement Agreement, and that this advice excused Armstrong's conduct after he had spent the money he'd been paid. This preposterous argument was rejected by all of the judges to whom Armstrong presented it, including the Court issuing the injunction. Now, Armstrong makes a new assertion concerning his former counsel -- namely, that the lawyer acted as a conduit for representations supposedly made by Church counsel, upon which Armstrong purportedly relied. This belated new theory is equally unavailing. The Settlement Agreement signed by Armstrong specifically provides that none of the signatories, including Armstrong, have relied on any representation made by anyone, which is not contained within the Agreement. Paragraph 18(B) provides,

Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

Settlement Agreement, ¶ 18(B).

The Court should dismiss out of hand Armstrong's attempt to introduce evidence on this point, including the testimony of Mr. Flynn and the salaciously bizarre

⁶(...continued)

declared unenforceable as against public policy. The court denied the motion, finding that the "[p]laintiff's interest in recovering monetary compensation in a private settlement . . . outweighs, under the circumstances of this case, any harm to the public policy that encourages cooperation in an investigation of the subject employer." 687 F.Supp. at 1514. Most significantly, the court stated, "Not the least justification of this holding is plaintiff's availability to testify completely and truthfully upon being subpoenaed by the EEOC." *Id.*

allegations contained in the Declarations of Gary Scarff and Jerry Whitfield.

D. The Order Is Not Ambiguous

Finally, Armstrong contends that the Order is ambiguous because he cannot ascertain who he is prohibited from assisting, yet the record is abundantly clear that in each of the instances relied upon here, Armstrong knew that he was providing assistance to persons who were making, or intending to make, claims against the Church of Scientology. It is disingenuous in the extreme for Armstrong to raise this strawman when he well knows who he is helping and in fact is helping them because they are aligned against the Church of Scientology.

IV. CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in detail in plaintiff's moving papers, plaintiff requests that Armstrong be adjudged in contempt of this Court and punished accordingly.

Dated: March 1, 1993

Respectfully submitted,

BOWLES & MOXON

By:


Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN AND CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

H:\ARMSTRON\CONTEMP1.REP

BACKGROUND INFORMATION FOR CASE EVALUATION

CONFIDENTIAL

Please fill out the following confidential questionnaire and return it as soon as possible. Ask other family members and friends for their input if necessary. It is very important to have all relevant personal information that may have a bearing on the case. Answer each question with as much detail as you possibly can. The more information you can give, the more easily an intervention can be planned. Use the reverse side of each page for your answers as well as additional paper if needed. Thank you.

YOUR NAME _____

DATE _____

ADDRESS _____

PHONE NUMBER _____

YOUR RELATIONSHIP TO THE GROUP MEMBER _____

WHO REFERRED YOU _____

NAME OF GROUP MEMBER _____

AGE OF GROUP MEMBER _____

HISTORY OF GROUP INVOLVEMENT

NAME OF GROUP _____

DATE RECRUITED _____

WHERE RECRUITED _____

- 1) Describe the events that led up to and included the person's recruitment. Include the following:
 - a) names of significant group members and leaders,
 - b) length of time from initial contact to full commitment, what jobs the person has had in the group,
 - c) where the person is located,
 - d) what kind of communication the person has had with

the family and friends since joining the group.
 e) how much time the person spends with family now, and
 with which family members in particular.

- 2) What reasons the person gave for joining the group?
- 3) Has the person ever expressed any doubts or difficulties with the group? If so, what were they? When were they expressed? To whom were they expressed?
- 4) Has the person's personality and/or behaviour changed since joining the group? If so, in what way? Be as specific as you can.
- 5) How much Scientology auditing and training has the person had to date? Specify if you can.
- 6) Has the person reached CLEAR? OT3?
 If so, state when.
- 7) Do the person's emotions/feelings get triggered (activated) when the group or the person's involvement with the group are brought up?
 a) If so, what specifics trigger the person most?
 b) What is the person's response when triggered?
- 8) Does the person speak readily about his/her group? Or rarely? What is generally said? To whom is it said?

PERSON'S BACKGROUND BEFORE GROUP INVOLVEMENT

- 9) Educational background.
- 10) Special hobbies, talents, interests.
- 11) Religious background. Include degree of interest before joining Scientology.
- 12) Employment experiences. Include what jobs, where, for how long and reasons for leaving.
- 13) Previous career goals and aspirations.
- 14) Previous physical health.
- 15) Was there any prior drug or alcohol abuse. If so, state when, what was used and degree of use.
- 16) Describe the individual's previous social, emotional and psychological well being.

Include any history of previous problems such as:

- a) death of a relative or a friend
- b) breakup of a relationship
- c) difficulty with opposite sex
- d) school problems with study or other
- d) and any other.

This question should be answered by the person's closest relatives.

17) Has the group member ever experienced any trauma, such as:

- a) an accident
- b) death of a loved one
- c) death of a loved pet
- d) hospitalization
- e) an extreme illness
- f) concussion
- g) coma.

If so, please describe in as much detail as you can the following:

- a) when it occurred
- b) for how long it lasted
- c) what the recovery was like
- d) how long the recovery took
- e) any medication(s) taken
- f) any temporary or lasting personality change after the trauma
- g) If there was a doctor involved, what was his diagnosis
- h) How did the person deal with the trauma subsequently.
- i) Has the person's method of handling the trauma changed since the group involvement? If so, in what way?

18) Describe the person's communication skills and abilities before group involvement. Was he/she:

- a) Generally ready to join in conversations? With family only? Or with strangers as well?
- b) Naturally withdrawn?
- c) Rarely responsive no matter the situation?
- d) Could only originate communication on certain subjects? If so, which subjects?
- e) If this has changed since joining the group, please specify how the person was earlier and what changed exactly.

19) Did the person usually show or express his/her feelings or emotions freely or not before the group involvement?

- a) Or did the person usually try to hide his/her feelings and emotions?
- b) Whether yes or no, describe how the feelings/emotions were shown or communicated. Or hidden.

- c) If this has changed since joining the group, please specify all the changes exactly.
- 20) What were the person's physical reactions, ie: body language, when he/she was:
- a) nervous
 - b) anxious
 - c) angry
 - d) resentful
 - e) hostile
 - f) or ready to leave in anger.
 - g) have these responses changed since the group involvement? If so, in what way exactly.
- 21) How did the person respond during times of stress?
- a) For example:, did the person run away? hide? go into denial? get angry? get defensive? try to resolve issues through talking? try to resolve them in other ways, and if so, in what ways?
 - b) If this has changed since group involvement, specify how it has changed.
- 22) Describe the person's state of mind just prior to joining the group. Include any problems or issues the person had at that time (which have not been mentioned earlier in this questionnaire). Be as specific as you can.
- 23) How often do you see the group member since his/her involvement? For how long?
- 24) Describe what actions you have taken with the group member up to now. Include how the person has responded to them.
- 25) Who has the most clout with the group member:
- a) emotionally? In what way?
 - b) logically? In what way?

PERSON'S FAMILY BACKGROUND

Father's name and occupation _____

Mother's name and occupation _____

Parents: Married _____ Separated _____ Divorced _____

Siblings: Name Age Sex Occupation 21

- 26) Which person has been closest to the group member?
Briefly describe their relationship.
a) Has this remained the same since group involvement?
If not, specify how the relationship has changed.
- 27) Describe the FAMILY environment before the group involvement began per the following:
a) significant relationships such as best friends, boy/girl friends and any specially close relatives, or lack of them,
b) communication patterns between family members, whether good or bad,
c) fights or estrangements in the family that had an impact on the group member or on family members,
d) significant emotional or other changes experienced by the family,
e) is there any alcoholism history? If so, with who?
f) is there any history of physical abuse? If so, by who?
- 28) Who is/is not willing to help with the intervention? If anyone is unwilling to do so, why?
- 29) Describe how the family members have emotionally reacted to the group involvement. Include frequency of reactions and by whom.
- 30) Include any books you have read or professionals you have spoken with.
- 31) What are your plans for the future?
- 32) Are there any resources or limitations that we should know about?
- 33) Is there anything else we should know about?

.....

Thank you. Approximately five days after you mail this form, (at least a week for overseas mail) please place a follow-up phone call to verify its arrival. This form is strictly confidential.

Please mail to: Jerry and Hana Whitfield
661 N. Occidental Blvd.
Los Angeles, CA 90026
Phone: (213) 413-3264
FAX: (213) 483-1920

CONSULTING RATES

DAILY

Daily rates are \$1,500.00. This sum includes a team of two exit consultants. This remains the same for a five hour day or a twelve hour day. (Most days run close to ten hours.)

HOURLY

Hourly rates are \$150.00 for in-person consultations prior to the exit consulting of the person needing help or \$1,000.00 per day whichever is less.

For telephone conversations, the rate is \$100.00 per hour. This covers advice, strategies and preliminary preparations for the family or friends. It excludes the initial consultation which is at no charge.

PHONE EXPENSES

All phone expenses must be born by the consultee. If we are not available when you call, please leave a message. (No one else has access to our phone line or answering machine so your message will be secure). We will return your call collect, and you can then call us back (at a less expensive rate). There are so many calls, it is impossible for us to bear this expense.

RETAINEREE FEES

Our retainer fee is between \$2,000.00 and \$3,000.00 depending upon the circumstances. All fees for in person or phone advice are taken from this retainer as well as other expenses as they come up prior to the intervention. If the fee for the first day of the intervention is available from this retainer, it can be deducted from the retainer. Whether or not there is money left over, a minimum of three days' fees is expected before the actual consulting begins.

This retainer is non refundable if the intervention is cancelled seven days or less before it is scheduled to occur. Airline tickets which are purchased at a reduced rate and

cannot be changed will have to be charged against the retainer. If there is another client who wants the same time slot, no fee will be charged against the retainer except actual charges incurred such as non refundable airfare, phone and fax costs and time involved according to the schedule. All money received is to be used against services and expenses before and during the intervention unless there is a cancellation seven days or less before the intervention is scheduled.

INCIDENTAL EXPENSES

Additional to the above fees are, car mileage at \$0.25 per mile or rental car if needed including gas and insurance, air-line tickets, ground transportation (to and from the airport), travel time billed at \$250.00 per day if under four hours and \$500.00 if over four hours for any out of town trips. Also lodging, meals and incidentals such as videos and VCR rentals, books, copies of documents, etc. There may be other incidental expenses not listed.

LENGTH OF TIME

Most interventions take five to seven days. A small percentage takes less time and a even smaller percentage can exceed two weeks.

In order to insure success, we must expect you to do EXTENSIVE preparatory work before we meet. It is essential for the success of the intervention. An extremely high percentage of these cases turn out just fine. Although there are no guarantees, please try to remain confident this one will too.

If the fees or the expense of an intervention prove to be too much or pose a problem financially, please let us know. These fees are negotiable. While we have to pay our bills just as anyone else, it is not our intent to place a financial burden on the family so that an intervention cannot be done.

ACCOMODATIONS

When looking for accomodations, our preference is a non-smoking room with a king size bed and a shower (bath tubs are fine if included). There should be a twenty-four hour diner or coffee shop nearby for the exit consultants to go to if they need to. There should be a phone in our room.

We look forward to working with you.

1039

DECLARATION OF MARIE ANN BUCK

I, Marie Ann Buck, declare:]

1. I am over the age of 18 years. I am a resident of Brightwaters, New York. I have personal knowledge of the following facts and, if called upon to testify as to these matters, could and would do so competently.

2. I am a parishioner of the Church of Scientology, Long Island, New York. I have been a staff member of the Church since 1989.

3. On September 24, 1990, I arrived at the Port Authority of New York at about 11:45 PM. I had just returned from Hollywood, California where I had been studying at the International Training Organization of the Church of Scientology since April 1990.

4. My father greeted me affectionately but seemed to be in grief. He mentioned that he was glad to see me after my absence. He escorted me to the family car where my mother and my brother Bobby were waiting. I was greeted very warmly.

5. On the way home to New Jersey, out of the blue, my father and mother mentioned that they wanted me to meet a fellow named Jerry. My first vital instinct was that this

was trouble because they mentioned that Jerry was a trained Scientologist and they used technical terms to describe him.

6. The reason I was troubled is that neither my mother or my father had ever shown any interest of any kind in Scientology before, and in fact, had denied me permission to use college funds for Scientology services even though it was my own money. Earlier, after attending an introductory film, father had slammed me for having him watch it and called me a "damn kid".

7. After visiting the house, my father suggested we go out for dessert where we would meet Jerry and his friend Bill. It was becoming quite evident that my father had arranged for this entire meeting well in advance. My father introduced Jerry and Bill to all of us. Jerry and Bill were very social, all smiles and pleasantries. I felt uneasy.

8. They asked me questions about how long I had been in Scientology, and Jerry related that he had joined in the early 1980's. He described his wife as being highly trained in Scientology and a long term member and proceeded to relate tall tales of her experiences aboard a ship. These stories were all designed to invalidate and degrade the subject of Scientology, senior Scientologists and the practices of my religion. Everyone at the table laughs and sided with Jerry and I was very upset by his ridicule and my family's acceptance of it.

9. The fact that I was tired from a transcontinental trip and that I had had no proper rest for over three days seemed to mean nothing to anyone at the table, my family or these two men. In fact, when I mentioned being tired, I was accused of lying to them about not having the next day off and needing to go to work the next day, but I finally talked them into going home. Jerry and Bill came with us. Jerry continued to ask me questions about my work on the staff of the Church, and each time that I would relate how much I enjoyed my job and the wins that I had in performing the duties of my post, Jerry would ridicule me, my job, accuse me of lying, and of having no integrity and endeavored to twist my every word into something other than what I had said.

10. At 12:30 AM, I began to beg off as I was very tired. Jerry said, (paraphrased) "Hold on, your father has something to add. He is very concerned about you being in Scientology." Mother came into the conversation and stated her concern with my choice of a religion. At this point she burst into tears. My father then began to severely criticize my church and its parishioners, though it was quite apparent he knew nothing about them and their mores. At this point I asked Jerry and Bill to leave. Jerry then began to describe what he claimed to be Scientology's confidential scriptures. This was extremely upsetting to me because premature exposure to the scriptures violates church policy. Jerry even played an audio tape that was supposed to be from the Founder of

scientology but the sound quality was very inferior compared 1043
to the standard of the tapes that I have previously heard at
the church. I then pretended to become very ill, so that Jerry
would leave me alone. Jerry then leaned forward, looked me in
the face and said that he was very happy to have had the
opportunity to talk to me, and he would be back to see me again
later that day.

11. I went to my room on the pretext of going to bed.
I listened at the door to make sure Jerry and Bill were gone and
my mom and dad were in bed. I then left, out the back door of my
house. I ran several blocks, and just barely caught the train.
I felt very sick and queasy throughout the entire trip to N.Y.
The following days were filled with calls from my mother and
father who expressed grief at my having left and expressed
concern for my welfare. I reassured them that I was alright
having returned to my post in the Church.

12. I can positively identify that the "Jerry" that
attempted to deprogram me is Jerry Whittfield of 661 N. Occidental
Blvd., Los Angeles, Ca.

13. I declare under penalty of perjury under the
laws of the State of New York that the foregoing is true and
correct. Executed on the 2nd of June 1991 in Los Angeles,
California.


Marie Ann Buck

DECLARATION OF JOHN F. WARREN

I, JOHN F. WARREN, also known as John Shampeau, do hereby declare and state as follows:

1. I am over the age of eighteen. The following statements are made of my own personal knowledge and if called upon to do so, I could and would competently testify thereto.

2. I am a professional motion picture sound recording engineer.

3. In early December, 1989, I introduced my mother and step-father to two of the people that I work with, both of whom are members of the Scientology religion.

4. My step-father became concerned that I would become interested in Scientology as well. To avoid any family disagreements on the subject, I agreed that I would speak with some professional counselors about Scientology.

5. Approximately two weeks later, a man named Cliff Daniels arrived at my home at 10:00 in the morning. I had heard of Daniels before, and knew him to be a "deprogrammer," or individual to uses kidnapping and force to persuade others to change their religious beliefs. I am informed, and therefore believe, that Daniels is currently either sought by the police or in custody for criminal activities unknown to me.

6. With Daniels were two individuals that Cliff introduced as Jerry and Hana Whitfield. Jerry Whifield brought several boxes of files and several video tapes into my house.

7. Daniels left after about 5 minutes. My wife and I

listened to Jerry and Hana as they showed us documents and a video tape concerning Scientology religious beliefs. I told the Whitfields that I was not a Scientologist, and that I had only read one book on the subject of Scientology. My wife was completely unfamiliar with Scientology prior to the Whitfield's arrival at our home.

8. Jerry Whitfield insisted I listen to this derogatory information about the Scientology religion despite my many protests that this made no sense to me, and that I had no further interest in communicating with him about this subject. After some time, they began showing me videos and other materials about religions other than Scientology, which also made no sense to me. After 10 hours of their persistent attempts to "deprogram" me, I asked them to leave.

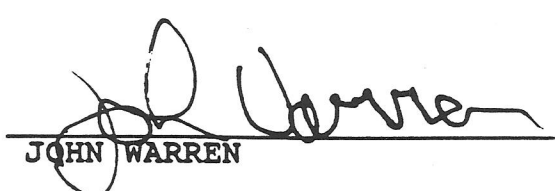
9. At no time did either Jerry or Hana Whitfield state that they were licensed counselors of any kind.

10. I found out later that my mother and step-father paid the Whitfields an undisclosed amount for this "counseling."

11. I have since looked into Scientology for myself, and found it to be both interesting and useful, quite unlike the picture that was painted for me by the Whitfields.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this 7 day of July, 1991 at Los Angeles, California.


JOHN WARREN

DECLARATION OF WILLIAM TRUAX

I, WILLIAM TRUAX, do hereby declare and state as follows:

1. I am over the age of eighteen. The following statements are made of my own personal knowledge and if called upon to do so, I could and would competently testify thereto.

2. I married Jane Truax in early 1990. At the time, both Jane and I were members of the Church of Scientology, although Jane had not been active as a member for several years.

3. Several months after we were married, Jane began saying negative things about our Church, comments that I had never heard her make before. I later learned that these comments were the results of meetings she had had with Spankey Taylor.

4. In late 1990, Jane became markedly more vociferous in her negative commentary about our church, and began to denounce it roundly. I later learned that these were the results of a meeting she had with people who claimed to be "exit counselors" or "deprogrammers", named Jerry and Hana Whitfield. Spanky Taylor had introduced Jane to these people.

5. In April and May, 1990, Jane went to the Church of Scientology's religious retreat in Clearwater, Florida, for some advanced spiritual counseling.

6. In approximately October, 1990, Jane arranged for me

to meet with two people who had told her some of the negative things about the Church which she had been repeating. These people were named Jerry and Hana. I agreed to meet with them, because I wanted to see just what it was that Jane had gotten involved in.

7. After talking with some of my friends at the Church, I realized that "Jerry and Hana" were probably Jerry and Hana Whitfield, people who are known to engage in the coercive kidnapping of adults known as "deprogramming". I decided to bring a friend of mine, Tony Falcaro, with me to the interview.

8. When Tony and I arrived at my house Jane was waiting there. She became upset, and immediately started yelling at me, saying that I had no intention of listening to what the Whitfields had to say.

9. Before Jane could call the Whitfields and tell them not to come, the the security guard from the lobby buzzed up and said that the Whitfields had arrived. Both Jane and I went running down the stairs to see the Whitfields. I went over to Jerry and shook his hand with one hand and grabbed his forearm with the other hand and said, "How much were you paid to come here and do this to me?"

10. Jerry went white. Hana started muttering, saying something like, "Have a nice day but we must be going now." Jerry and Hana then ran out the door of the apartment building.

11. Jane and I then had an argument. I was angry that

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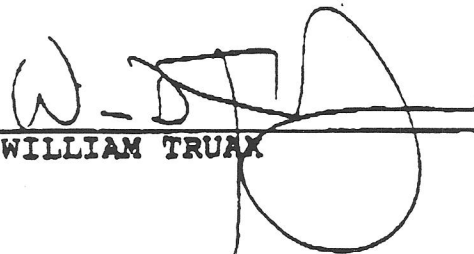
Jane would try to have me deprogrammed. At the end of the argument, Jane agreed that she would go see a minister at the Church the next day to help her sort this out.

11. Although Jane did go to see a church minister, after some time I discovered that she had also been seeing Spanky Taylor on a regular basis. Spanky had been counseling Jane and showing her anti-Scientology materials as part of that counseling.

12. Jane and I are now in the process of getting a divorce.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this 30th day of June, 1991 at Los Angeles, California.


WILLIAM TRUAX

o0o

DECLARATION BY KEVIN HULCE

I, Kevin Hulce, declare as follows:

1. I am over the age of 18 years. I am a resident of Los Angeles County, California. I have personal knowledge of the matters specified in this declaration and, if called upon to testify on such matters, could and would do so competently.

2. I am a member of the Church of Scientology.

3. This is to explain my dealings with Hana and Jerry Whitfield of Los Angeles, California.

4. On Sunday, March 26, 1989, I went to a surprise birthday party for my mother at my parent's house. I arrived at that location at or near 11:00 a.m. that day. After about 45 minutes two people arrived who were introduced to me by my sister, Kim Hulce, as people she had met while on vacation in the Virgin Islands earlier in the year. She identified these people as Jerry and Hana Whitfield.

5. Soon after the Whitfields arrived, I noticed that Jerry Whitfield had on a braclet that indicated he was a member of the Church of Scientology. I asked him if he was a Scientologist. Jerry replied that he was. I then proceeded to speak with Jerry and Hana Whitfield for sometime. They told me all of the Church

courses and counseling they claimed to have done. Hanna asserted that she had just finished a new course first offered by Churches of Scientology within the year previous. The Whitfields made every effort to give me the impression that they were currently active members of the Church of Scientology. At no time during this conversation did they state that they were no longer members of the Church of Scientology but now deprogrammers associated with the Cult Awareness Network.

6. Later in the day I explained to Jerry that I was working to improve the previously rocky relationship between my father and me. Hana said that I had done a very good job improving my parental relationship and claimed that she would see what she could do to help improve the ties further. At this point I felt that I had made two friends that I could trust to help me with my relationship with my family.

7. At about 9:00 p.m. that day, Jerry pulled out a book by Steve Hassan called COMBATING CULT MIND CONTROL. He pointed out the ten points of mind control and compared Scientology to them one at a time, saying that each one of the points on mind control applied to Scientology. As we spoke, Jerry became more and more verbally hostile toward myself and my religion. I was very stunned and felt betrayed.

8. It was close to 12:00 midnight, Jerry brought into the house a box of files that he claimed had been in his car. He said that

these materials concerned the Church of Scientology. I began to suspect that Jerry and Hana were no longer with the Church. I asked Hana what her standing in the Church was. She told me that she was no longer with the Church of Scientology but had been expelled. I then realized that I had been deceived by the Whitfields.

9. Throughout the early hours both Jerry and Hana talked about how the material in the box was the "truth" about Scientology. As they talked, my parents appeared to become increasingly upset and I became worried about them. I told them that I wanted to copy the contents of the box. Jerry said that he could not let me copy them without his being present. Consequently, I was up all night. I had to wait until 6:00 a.m. the following morning before we could go somewhere to make the copies.

10. Jerry, Hana, my family and I copied most of the contents of the box and went back to my parents' house at around 9:00am on March 27, 1989. I then gathered up my clothes and the contents of the box and got ready to leave. Jerry told me not to go back to the Church because "they" would lock me up. I told him that I was going and he jumped in front of the door to stop me and asserted that if I went back to the Church, "they" would not let me out. By now my mother was crying almost hysterically, my father was shaking and my sister had become very upset. None of my family nor I had slept all night. I left in my pick-up.

11. One of the things that I copied from the box was a document paraphrased release for exit counseling that showed basic information of some sort of release and waiver for the Whitfields

unprofessional " counseling".

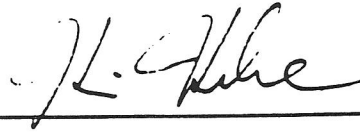
12. Since this meeting with the Whitfields, my father has been very angry and upset with me. My mother cries while talking to me over the phone. They have told me that they have been working with and had dinner on several occasions with a woman named Priscilla Coates. Because of these meetings and the night with the Whitfields, the relationship between my parents and myself has totally been destroyed. My parents are continuously fed lies about the Church of Scientology. This has made it impossible to communicate to them by any other means except for letters though the mail.

13. I now realize that Hana and Jerry Whitfield were attempting to deprogram me and had deceived my parents and sister into going along with this. Hana and Jerry had lied to me about their standing in the Church of Scientology and then attacked me verbally regarding my religion. The Whitfields, Priscilla Coates and the Cult Awareness Network have done everything they can to come between my family and me.

14. For the past two years I have worked to repair the damage that has been caused between my family and me by the Whitfields, Priscilla Coates and the Cult Awareness Network. I have been denied my family by the actions of these people.

I declare under penalty of perjury under the laws of the State

of California that the foregoing is true and correct. Executed on
June 30, 1991 in Los Angeles, California.

A handwritten signature in dark ink, appearing to read "K. Hulce", is written over a solid horizontal line.

Kevin Hulce

II.

[9] These statutes also deprive the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

[10-12] Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942). See also *Maynard v. Hill*, 125 U.S. 190, 8 S.Ct. 723, 31 L.Ed. 654 (1888). To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State.

These convictions must be reversed. It is so ordered.

Reversed.

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Mr. Justice STEWART, concurring.

I have previously expressed the belief that "it is simply not possible for a state law to be valid under our Constitution which makes the criminality of an act depend upon the race of the actor." *McLaughlin v. State of Florida*, 379 U.S. 184, 198, 85 S.Ct. 283, 292, 13 L.Ed.2d 222 (concurring opinion). Because I adhere to that belief, I concur in the judgment of the Court.

388 U.S. 307

Wyatt Tee WALKER et al., Petitioners,

v.

CITY OF BIRMINGHAM.

No. 249.

Argued March 13 and 14, 1967.

Decided June 12, 1967.

Proceeding to review criminal contempt convictions for violating temporary injunction issued by Circuit Court, Jefferson County, Alabama. The Supreme Court of Alabama, 279 Ala. 53, 181 So.2d 493, affirmed in part and quashed in part and certiorari was granted. The Supreme Court, Mr. Justice Stewart, held that, even though substantial constitutional questions could be raised in view of generality of language contained in city parade ordinance and vagueness of temporary injunction restraining petitioners from participating in or encouraging mass street parades or processions without a permit as required by the ordinance, petitioners who did not attempt to have injunction dissolved or modified or to secure parade permit and who deliberately violated injunction with expectation of going to jail were not entitled to have the constitutional issues considered and were properly convicted of criminal contempt.

Affirmed.

Mr. Chief Justice Warren, Mr. Justice Douglas, Mr. Justice Brennan and Mr. Justice Fortas dissented.

1. Contempt $\S$ 60(3)

Elements of criminal contempt may be established by circumstantial evidence.

2. Injunction $\S$ 110

Alabama circuit court, as court of equity, had jurisdiction over petitioners and over subject of controversy when it issued injunction restraining petitioners from participating in mass street parades without permit required by city

ordinance. Const.Ala.1901, § 144; Code of Ala., Tit. 7, §§ 1038, 1039.

3. Municipal Corporations ⇨703(1) States ⇨88

State and local governments have strong interests in regulating use of their streets and other public places.

4. Municipal Corporations ⇨703(2)

When protest takes form of mass demonstrations, parades, or picketing on public streets and sidewalks, free passage of traffic and prevention of public disorder and violence become important objects of legitimate state concern.

5. Constitutional Law ⇨274

First and Fourteenth Amendments do not afford same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways as to those who communicate ideas by pure speech. U.S.C.A.Const. Amends. 1, 14.

6. Municipal Corporations ⇨703(1)

Authority of municipality to impose regulations in order to assure safety and convenience of people in use of public highways is not inconsistent with civil liberties but rather is one of means of safeguarding good order upon which they ultimately depend. U.S.C.A.Const. Amends. 1, 14.

7. Municipal Corporations ⇨122(2)

It could not be assumed that parade ordinance was void on its face.

8. Constitutional Law ⇨46(3)

Way to raise question of constitutionality of state court's injunction restraining demonstration was to apply to state courts to have injunction modified or dissolved. U.S.C.A.Const. Amends. 1, 14.

9. Injunction ⇨225

Demonstrators were not free to disobey injunction restraining them from participating in or encouraging mass street parades or processions without a permit required by city ordinance on ground that ordinance on which injunc-

tion was based had been administered in the past in an arbitrary and discriminatory fashion, where they had not applied for permit. U.S.C.A.Const. Amends. 1, 14; Code of Ala., Tit. 7, §§ 1038, 1039, Tit. 13, §§ 4, 5, 126, 143; Const.Ala.1901, § 144; Supreme Court Rules Ala., rule 47.

10. Evidence ⇨82

It could not be presumed that state courts would have ignored petitioners' constitutional claims in contesting injunction.

11. Constitutional Law ⇨46(3) Injunction ⇨219

Even though substantial constitutional questions could be raised in view of generality of language contained in city parade ordinance and vagueness of temporary injunction restraining petitioners from participating in or encouraging mass street parades or processions without a permit as required by the ordinance, petitioners who did not attempt to have injunction dissolved or modified or to secure parade permit and who deliberately violated injunction with expectation of going to jail were not entitled to have the constitutional issues considered and were properly convicted of criminal contempt. U.S.C.A.Const. Amends. 1, 14; Code of Ala., Tit. 7, §§ 1038, 1039, Tit. 13, §§ 4, 5, 126, 143; Const.Ala.1901, § 144; Supreme Court Rules Ala., rule 47.

12. Constitutional Law ⇨82

Demonstrators were not constitutionally free to ignore all procedures of law and carry their battle to the streets. U.S.C.A.Const. Amends. 1, 14.

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Jack Greenberg, New York City, for petitioners.

Earl McBee and J. M. Breckenridge, Birmingham, Ala., for respondent.

Louis F. Claiborne, Washington, D. C., for United States, amicus curiae, by special leave of Court.

Mr. Justice STEWART delivered the opinion of the Court.

On Wednesday, April 10, 1963, officials of Birmingham, Alabama, filed a bill of complaint in a state circuit court asking for injunctive relief against 139 individuals and

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two organizations. The bill and accompanying affidavits stated that during the preceding seven days:

"[R]espondents [had] sponsored and/or participated in and/or conspired to commit and/or to encourage and/or to participate in certain movements, plans or projects commonly called 'sit-in' demonstrations, 'kneel-in' demonstrations, mass street parades, trespasses on private property after being warned to leave the premises by the owners of said property, congregating in mobs upon the public streets and other public places, unlawfully picketing private places of business in the City of Birmingham, Alabama; violation of numerous ordinances and statutes of the City of Birmingham and State of Alabama. * * *

It was alleged that this conduct was "calculated to provoke breaches of the peace," "threaten[ed] the safety, peace and tranquility of the City," and placed "an undue burden and strain upon the manpower of the Police Department."

1. The text of the injunction is reproduced as Appendix A to this opinion.

The Birmingham parade ordinance, § 1159 of the Birmingham City Code, provides that:

"It shall be unlawful to organize or hold, or to assist in organizing or holding, or to take part or participate in, any parade or procession or other public demonstration on the streets or other public ways of the city, unless a permit therefor has been secured from the commission.

"To secure such permit, written application shall be made to the commission, setting forth the probable number of persons, vehicles and animals which will be engaged in such parade, procession or other public demonstration, the purpose for which it is to be held or had, and the

The bill stated that these infractions of the law were expected to continue and would "lead to further imminent danger to the lives, safety, peace, tranquility and general welfare of the people of the City of Birmingham," and that the "remedy by law [was] inadequate." The circuit judge granted a temporary injunction as prayed in the bill, enjoining the petitioners from, among other things, participating in or encouraging mass street parades or mass processions without a permit as required by a Birmingham ordinance.¹

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Five of the eight petitioners were served with copies of the writ early the next morning. Several hours later four of them held a press conference. There a statement was distributed, declaring their intention to disobey the injunction because it was "raw tyranny under the guise of maintaining law and order."² At this press conference one of the petitioners stated: "That they had respect for the Federal Courts, or Federal Injunctions, but in the past the State Courts had favored local law enforcement, and if the police couldn't handle it, the mob would."

That night a meeting took place at which one of the petitioners announced that "[i]njunction or no injunction we are going to march tomorrow." The

streets or other public ways over, along or in which it is desired to have or hold such parade, procession or other public demonstration. The commission shall grant a written permit for such parade, procession or other public demonstration, prescribing the streets or other public ways which may be used therefor, unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused. It shall be unlawful to use for such purposes any other streets or public ways than those set out in said permit.

"The two preceding paragraphs, however, shall not apply to funeral processions."

2. The full statement is reproduced as Appendix B to this opinion.

next afternoon, Good Friday, a large crowd gathered in the vicinity of Sixteenth Street and Sixth Avenue North in Birmingham. A group of about 50 or 60 proceeded to parade along the sidewalk while a crowd of 1,000 to 1,500 onlookers stood by, "clapping, and hollering, and [w]hooping."

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Some of the crowd followed the marchers and spilled out into the street. At least three of the petitioners participated in this march.

Meetings sponsored by some of the petitioners were held that night and the following night, where calls for volunteers to "walk" and go to jail were made. On Easter Sunday, April 14, a crowd of between 1,500 and 2,000 people congregated in the midafternoon in the vicinity of Seventh Avenue and Eleventh Street North in Birmingham. One of the petitioners was seen organizing members of the crowd in formation. A group of about 50, headed by three other petitioners, started down the sidewalk two abreast. At least one other petitioner was among the marchers. Some 300 or 400 people from among the onlookers followed in a crowd that occupied the entire width of the street and overflowed onto the sidewalks. Violence occurred. Members of the crowd threw rocks that injured a newspaperman and damaged a police motorcycle.

3. "The circuit court, or judges thereof when exercising equity jurisdiction and powers may punish for contempt by fine not exceeding fifty dollars, and by imprisonment, not exceeding five days, one or both." Ala.Code, Tit. 13, § 143. See also id., §§ 4-5, 126.

The circuit court dismissed the contempt proceedings against several individuals on grounds of insufficient evidence.

Those petitioners who participated in the April 11 press conference contend that the circuit court improperly relied on this incident in finding them guilty of contempt, claiming that they were engaged in constitutionally protected free speech. We find no indication that the court considered the incident for any purpose other than the legitimate one of establishing

The next day the city officials who had requested the injunction applied to the state circuit court for an order to show cause why the petitioners should not be held in contempt for violating it. At the ensuing hearing the petitioners sought to attack the constitutionality of the injunction on the ground that it was vague and overbroad, and restrained free speech. They also sought to attack the Birmingham parade ordinance upon similar grounds, and upon the further ground that the ordinance had previously been administered in an arbitrary and discriminatory manner.

The circuit judge refused to consider any of these contentions, pointing out that there had been neither a motion to dissolve the injunction, nor an effort to comply with it by applying for a permit from the city commission before engaging in the Good Friday and Easter Sunday parades. Consequently, the court held that the

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only issues before it were whether it had jurisdiction to issue the temporary injunction, and whether thereafter the petitioners had knowingly violated it. Upon these issues the court found against the petitioners, and imposed upon each of them a sentence of five days in jail and a \$50 fine, in accord with an Alabama statute.³

[1] The Supreme Court of Alabama affirmed.⁴ That court, too, declined to

that the participating petitioners' subsequent violation of the injunction by parading without a permit was willful and deliberate.

4. The Alabama Supreme Court quashed the conviction of one defendant because of insufficient proof that he knew of the injunction before violating it, and the convictions of two others because there was no showing that they had disobeyed the order. 279 Ala. 53, 64, 181 So.2d 493, 504.

Two of the petitioners here claim that there was a complete dearth of evidence to establish that they had knowledge of the injunction before violating it, and that their convictions are therefore constitutionally defective under the principle of *Thompson v. City of Louisville*, 362

consider the petitioners' constitutional
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attacks upon the injunction and the underlying Birmingham parade ordinance:

"It is to be remembered that petitioners are charged with violating a temporary injunction. We are not reviewing a denial of a motion to dissolve or discharge a temporary injunction. Petitioners did not file any motion to vacate the temporary injunction until after the Friday and Sunday parades. Instead, petitioners deliberately defied the order of the court and did engage in and incite others to engage in mass street parades without a permit.

* * * * *

"We hold that the circuit court had the duty and authority, in the first instance, to determine the validity of the ordinance, and, until the decision of the circuit court is reversed for error by orderly review, either by the circuit court or a higher court, the orders of the circuit court based on its decision are to be respected and disobedience of them is contempt of its lawful authority, to be punished. *Howat v. State of Kansas*, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550." 279 Ala. 53, 60, 62-63, 181 So.2d 493, 500, 502.

Howat v. State of Kansas, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550, was decided by this Court almost 50 years ago. That was a case in which people had been punished by a Kansas trial court for refusing to obey an antistrike injunction issued under the state industrial relations act. They had claimed a right to disobey the court's order upon the ground that the state statute and the injunction based upon it were invalid under the Federal Constitution. The Su-

preme Court of Kansas had affirmed the judgment, holding that the trial court "had general power to issue injunctions in equity, and that even if its exercise of the power was erroneous, the injunction was not void, and the defendants were precluded

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from attacking it in this collateral proceeding * * * that, if the injunction was erroneous, jurisdiction was not thereby forfeited, that the error was subject to correction only by the ordinary method of appeal, and disobedience to the order constituted contempt." 258 U.S., at 189, 42 S.Ct. at 280.

This Court, in dismissing the writ of error, not only unanimously accepted but fully approved the validity of the rule of state law upon which the judgment of the Kansas court was grounded:

"An injunction duly issuing out of a court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming, but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." 258 U.S., at 189-190, 42 S.Ct., at 280.

The rule of state law accepted and approved in *Howat v. State of Kansas* is consistent with the rule of law followed by the federal courts.⁵

U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654. The Alabama Supreme Court's recitation of the evidence on this issue, which is supported by the record, plainly shows this claim is without foundation. It is of course, a familiar doctrine that proof of the elements of criminal contempt may be established by circumstantial evidence. *Bullock v. United States*, 6 Cir.,

265 F.2d 683, cert. denied sub nom. *Kasper v. United States*, 360 U.S. 932, 79 S.Ct. 1452, 3 L.Ed.2d 1546.

5. *Brougham v. Oceanic Steam Navigation Co.*, 2 Cir., 205 F. 857; *Trickett v. Kaw Valley Drainage Dist.*, 10 Cir., 25 F.2d 851, cert. denied, 278 U.S. 624, 49 S.Ct. 26, 73 L.Ed. 544; *O'Hearne v. Unit-*

In the present case, however, we are asked to hold that this rule of law, upon which the Alabama courts relied, was constitutionally impermissible. We are asked to say that the Constitution compelled Alabama to allow the petitioners to violate this injunction, to organize and engage in these mass street parades and demonstrations, without any previous effort on their part to have the injunction dissolved or modified, or any attempt to secure a parade permit in accordance with its terms. Whatever the limits of *Howat v. State of Kansas*,⁶ we cannot accept the petitioners' contentions in the circumstances of this case.

[2-6] Without question the state court that issued the injunction had, as a court of equity, jurisdiction over the petitioners and over the subject matter of the controversy.⁷ And this is not a case where the injunction was transparently invalid or had only a frivolous pretense to validity. We have consistently recognized the strong interest of state and local governments in regulating the use of their streets and other public places. *Cox v. State of New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049; *Kovacs v. Cooper*, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513; *Poulos v. State of New Hampshire*, 345 U.S. 395, 73 S.Ct. 760,

v. State of Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149. When protest takes the form of mass demonstrations, parades, or picketing on public streets and sidewalks, the free passage of traffic and the prevention of public disorder and violence become important objects of legitimate state concern. As the Court stated, in *Cox v. State of Louisiana*, "We emphatically reject the notion * * * that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech." 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471. And as a unanimous Court stated in *Cox v. State of New Hampshire*:

"Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but

ed States, 62 App.D.C. 285, 66 F.2d 933, cert. denied, 290 U.S. 683, 54 S.Ct. 120, 78 L.Ed. 589; *Locke v. United States*, 5 Cir., 75 F.2d 157, cert. denied, 295 U.S. 733, 55 S.Ct. 644, 79 L.Ed. 1681; *McCann v. New York Stock Exchange*, 2 Cir., 80 F.2d 211, cert. denied sub nom. *McCann v. Leibell*, 299 U.S. 603, 57 S.Ct. 233, 81 L.Ed. 444; *McLeod v. Majors*, 5 Cir., 102 F.2d 128; *Kasper v. Brittain*, 6 Cir., 245 F.2d 92, cert. denied 355 U.S. 834, 78 S.Ct. 54, 2 L.Ed.2d 46. See also *Ex parte Rowland*, 104 U.S. 604, 26 L.Ed. 861; *In re Ayers*, 123 U.S. 443, 8 S.Ct. 164, 31 L.Ed. 216; *In re Burrus*, 136 U.S. 586, 10 S.Ct. 850, 34 L.Ed. 500; *United States v. Shipp*, 203 U.S. 563, 27 S.Ct. 165, 51 L.Ed. 319; *United States v. United Mine Workers*, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884.

6. In *In re Green*, 369 U.S. 689, 82 S.Ct. 1114, 8 L.Ed.2d 198, the petitioner was convicted of criminal contempt for violating a labor injunction issued by an Ohio court. Relying on the pre-emptive command of the federal labor law, the Court held that the state courts were required to hear Green's claim that the state court was *without jurisdiction* to issue the injunction. The petitioner in *Green*, unlike the petitioners here, had attempted to challenge the validity of the injunction *before* violating it by promptly applying to the issuing court for an order vacating the injunction. The petitioner in *Green* had further offered to prove that the court issuing the injunction had agreed to its violation as an appropriate means of testing its validity.

7. Ala.Const., Art. 6, § 144; Ala.Code, Tit. 7, §§ 1038-1039.

rather as one of the means of safeguarding the good order upon which they ultimately depend." 312 U.S., at 574, 61 S.Ct., at 765.

[7] The generality of the language contained in the Birmingham parade ordinance upon which the injunction was based would unquestionably raise substantial constitutional issues concerning some of its provisions.⁸ *Schneider v. State of New Jersey*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Saia v. People of State of New York*, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574; *Kunz v. People of State of New York*, 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280. The petitioners, however, did not even attempt to apply to the Alabama courts for an authoritative construction of the ordinance. Had they done so, those courts might have given the licensing authority granted in the ordinance

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a narrow and precise scope, as did the New Hampshire courts in *Cox v. State of New Hampshire* and *Poulos v. State of New Hampshire*, both *supra*. Cf. *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 91, 86 S.Ct. 211, 213, 15 L.Ed.2d 176; *City of Darlington v. Stanley*, 239 S.C. 139, 122 S.E.2d 207. Here, just as in *Cox* and *Poulos*, it could not be assumed that this ordinance was void on its face.

[8] The breadth and vagueness of the injunction itself would also unquestionably be subject to substantial consti-

8. See n. 1, *supra*.

9. Mrs. Lola Hendricks, *not* a petitioner in this case, testified that on April 3:

"I went to Mr. Connor's office, the Commissioner's office at the City Hall Building. We went up and Commissioner Connor met us at the door. He asked, 'May I help you?' I told him, 'Yes, sir, we came up to apply or see about getting a permit for picketing, parading, demonstrating.'"

* * * *

"I asked Commissioner Connor for the permit, and asked if he could issue the permit, or other persons who would refer me to, persons who would issue a permit. He said, 'No, you will not get a permit in

tutional question. But the way to raise that question was to apply to the Alabama courts to have the injunction modified or dissolved. The injunction in all events clearly prohibited mass parading without a permit, and the evidence shows that the petitioners fully understood that prohibition when they violated it.

[9] The petitioners also claim that they were free to disobey the injunction because the parade ordinance on which it was based had been administered in the past in an arbitrary and discriminatory fashion. In support of this claim they sought to introduce evidence that, a few days before the injunction issued, requests for permits to picket had been made to a member of the city commission. One request had been rudely rebuffed,⁹ and this same official had later made clear that he

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was without power to grant the permit alone, since the issuance of such permits was the responsibility of the entire city commission.¹⁰ Assuming the truth of this proffered evidence, it does not follow that the parade ordinance was void on its face. The petitioners, moreover, did not apply for a permit either to the commission itself or to any commissioner after the injunction issued. Had they done so, and had the permit been refused, it is clear that their claim of arbitrary or discriminatory administration of the ordinance would have been

Birmingham, Alabama to picket. I will picket you over to the City Jail,' and he repeated that twice."

10. Commissioner Connor sent the following telegram to one of the petitioners on April 5:

"Under the provisions of the city code of the City of Birmingham, a permit to picket as requested by you cannot be granted by me individually but is the responsibility [sic] of the entire commission. I insist that you and your people do not start any picketing on the streets in Birmingham, Alabama.

"Eugene 'Bull' Connor, Commissioner of Public Safety."

considered by the state circuit court upon a motion to dissolve the injunction.¹¹

[10] This case would arise in quite a different constitutional posture if the petitioners, before disobeying the injunction, had challenged it in the Alabama courts, and had been met with delay or frustration of their constitutional claims. But there is no showing that such would have been the fate of a timely motion to modify or dissolve the injunction. There was an interim of two

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days between the issuance of the injunction and the Good Friday march. The petitioners give absolutely no explanation of why they did not make some application to the state court during that period. The injunction had issued *ex parte*; if the court had been presented with the petitioners' contentions, it might well have dissolved or at least modified its order in some respects. If it had not done so, Alabama procedure would have provided for an expedited process of appellate review.¹² It cannot be presumed that the Alabama courts would have ignored the petitioners' constitutional claims. Indeed, these contentions were accepted in another case by an Alabama appellate court that struck down on direct review the conviction under this very ordinance of one of these same petitioners.¹³

11. In its opinion, that court stated: "The legal and orderly processes of the Court would require the defendants to attack the unreasonable denial of such permit by the Commission of the City of Birmingham through means of a motion to dissolve the injunction at which time this Court would have the opportunity to pass upon the question of whether or not a compliance with the ordinance was attempted and whether or not an arbitrary and capricious denial of such request was made by the Commission of the City of Birmingham. Since this course of conduct was not sought by the defendants, the Court is of the opinion that the validity of its injunction order stands upon its prima facie authority to execute the same."

12. Ala.Code, Tit. 7 App., Sup.Ct.Rule 47.

The rule of law upon which the Alabama courts relied in this case was one firmly established by previous precedents. We do not deal here, therefore, with a situation where a state court has followed a regular past practice of entertaining claims in a given procedural mode, and without notice has abandoned that practice to the detriment of a litigant who finds his claim foreclosed by a novel procedural bar. *Barr v. City of Columbia*, 378 U.S. 146, 84 S.Ct. 1734, 12 L.Ed.2d 766. This is not a case where a procedural requirement has been sprung upon an unwary litigant when prior practice did not give him fair notice of its existence. *Wright v. State of Georgia*, 373 U.S. 284, 291, 83 S.Ct. 1240, 1245, 10 L.Ed.2d 349.

[11] The Alabama Supreme Court has apparently never in any criminal contempt case entertained a claim of nonjurisdictional error.¹⁴ In *Fields v. City of Fairfield*, 273

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Ala. 588, 143 So. 2d 177,¹⁵ decided just three years before the present case, the defendants, members of a "White Supremacy" organization who had disobeyed an injunction, sought to challenge the constitutional validity of a permit ordinance upon which the injunction was based. The Supreme Court of Alabama, finding that the trial

13. *Shuttlesworth v. City of Birmingham*, 43 Ala.App. 68, 180 So.2d 114. The case is presently pending on certiorari review in the Alabama Supreme Court.

14. As early as 1904, the Alabama Supreme Court noted that: "An evident distinction is to be made in contempt proceedings for the violation of the writ of injunction where the writ is improvidently or irregularly issued and where it is issued without jurisdiction * * *." *Old Dominion Telegraph Co. v. Powers*, 140 Ala. 220, 226, 37 So. 195, 197. See *Board of Revenue of Covington County v. Merrill*, 193 Ala. 521, 68 So. 971.

15. Reversed on other grounds, 375 U.S. 248, 84 S.Ct. 360, 11 L.Ed.2d 311.

court had jurisdiction, applied the same rule of law which was followed here:

"As a general rule, an unconstitutional statute is an absolute nullity and may not form the basis of any legal right or legal proceedings, yet until its unconstitutionality has been judicially declared in appropriate proceedings, no person charged with its observance under an order or decree may disregard or violate the order or the decree with immunity from a charge of contempt of court; and he may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree * * *." 273 Ala., at 590, 143 So. 2d, at 180.

These precedents clearly put the petitioners on notice that they could not bypass orderly judicial review of the injunction before disobeying it. Any claim that they were entrapped or misled is wholly unfounded, a conclusion confirmed by evidence in the record showing that when the petitioners deliberately violated the injunction they expected to go to jail.

[12] The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted

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his station, however righteous his motives, and irrespective of his race, color, politics, or religion.¹⁶ This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry

16. The same rule of law was followed in *Kasper v. Brittain*, 6 Cir., 245 F.2d 92. There, a federal court had ordered the public high school in Clinton, Tennessee, to desegregate. Kasper "arrived from somewhere in the East," and organized a campaign "to run the Negroes out of the school." The federal court issued an *ex parte* restraining order enjoining Kasper from interfering with desegregation. Relying upon the First Amendment, Kasper harangued a crowd "to the effect

their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.

Affirmed.

APPENDIX A TO OPINION OF THE COURT.

"TEMPORARY INJUNCTION—
April 10, 1963.

"A verified Bill of Complaint in the above styled cause having been presented to me on this the 10th of April 1963 at 9:00 O'Clock P.M. in the City of Birmingham, Alabama.

"Upon consideration of said verified Bill of Complaint and the affidavits of Captain G. V. Evans and Captain George Wall, and the public welfare, peace and safety requiring it, it is hereby considered, ordered, adjudged and decreed that a peremptory or a temporary writ of injunction be and the same is hereby issued in accordance with the prayer of said petition.

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"It is therefore ordered, adjudged and decreed by the Court that upon the complainant entering into a good and sufficient bond conditioned as provided by law, in the sum of Twenty five Hundred Dollars (\$2500.00), same to be approved by the Register of this Court that the Register issue a peremptory or temporary writ of injunction that the respondents and the others identified in said Bill of Complaint, their agents, members, employees, servants, followers, attorneys,

that although he had been served with the restraining order, it did not mean anything * * *." His conviction for criminal contempt was affirmed by the Court of Appeals for the Sixth Circuit. That court concluded that "an injunctive order issued by a court must be obeyed," whatever its seeming invalidity, citing *Howat v. State of Kansas*, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550. This Court denied certiorari, 355 U.S. 834, 78 S.Ct. 54, 2 L.Ed.2d 46.

successors and all other persons in active concert or participation with the respondents and all persons having notice of said order from continuing any act hereinabove designated particularly: engaging in, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as 'kneel-ins' in churches in violation of the wishes and desires of said churches.

"W. A. Jenkins, Jr., As Circuit Judge of the Tenth Judicial Circuit of Alabama, In Equity Sitting."

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APPENDIX B TO OPINION OF THE COURT.

"In our struggle for freedom we have anchored our faith and hope in the rightness of the Constitution and the moral laws of the universe.

"Again and again the Federal judiciary has made it clear that the privileges [*sic*] guaranteed under the First and the Fourteenth Amendments are to [*sic*] sacred to be trampled upon by the

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machinery of state government and police power. In the past we have abided by Federal injunctions out of respect for the forthright and consistent leadership that the Federal judiciary has given in establishing the principle of integration as the law of the land.

"However we are now confronted with recalcitrant forces in the Deep South that will use the courts to perpetuate the unjust and illegal system of racial separation.

"Alabama has made clear its determination to defy the law of the land. Most of its public officials, its legislative body and many of its law enforcement agents have openly defied the desegregation decision of the Supreme Court. We would feel morally and legal [*sic*] responsible to obey the injunction if the courts of Alabama applied equal justice to all of its citizens. This would be sameness made legal. However the issuance [*sic*] of this injunction is a blatant of *difference* made legal.

"Southern law enforcement agencies have demonstrated now and again that they will utilize the force of law to misuse the judicial process.

"This is raw tyranny under the guise of maintaining law and order. We cannot in all good conscience obey such an injunction which is an unjust, undemocratic and unconstitutional misuse of the legal process.

"We do this not out of any disrespect [*sic*] for the law but out of the highest respect for *the* law. This is not an attempt to evade or defy the law or engage in

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chaotic anarchy. Just as in all good conscience we cannot obey unjust laws, neither can we respect the unjust use of the courts.

"We believe in a system of law based on justice and morality. Out of our great love for the Constitution of the U. S. and our desire to purify the judicial system

of the state of Alabama, we risk this critical move with an awareness of the possible consequences involved."

Mr. Chief Justice WARREN, whom Mr. Justice BRENNAN and Mr. Justice FORTAS join, dissenting.

Petitioners in this case contend that they were convicted under an ordinance that is unconstitutional on its face because it submits their First and Fourteenth Amendment rights to free speech and peaceful assembly to the unfettered discretion of local officials. They further contend that the ordinance was unconstitutionally applied to them because the local officials used their discretion to prohibit peaceful demonstrations by a group whose political viewpoint the officials opposed. The Court does not dispute these contentions, but holds that petitioners may nonetheless be convicted and sent to jail because the patently unconstitutional ordinance was copied into an injunction—issued *ex parte* without prior notice or hearing on the request of the Commissioner of Public Safety—prohibiting all persons having notice of the injunction to violate the ordinance without any limitation of time. I dissent because I do not believe that the fundamental protections of the Constitution were meant to be so easily evaded, or that "the civilizing hand of law" would be ham-

pered in the slightest by enforcing the First Amendment in this case.

The salient facts can be stated very briefly. Petitioners are Negro ministers who sought to express their concern about racial discrimination in Birmingham, Alabama, by holding peaceful protest demonstrations in that

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city on Good Friday and Easter Sunday 1963. For obvious reasons, it was important for the significance of the demonstrations that they be held on those particular dates. A representative of petitioners' organization went to the City Hall and asked "to see the person or persons in charge to issue permits, permits for parading, picketing, and demonstrating." She was directed to Public Safety Commissioner Connor, who denied her request for a permit in terms that left no doubt that petitioners were not going to be issued a permit under any circumstances. "He said, 'No you will not get a permit in Birmingham, Alabama to picket. I will picket you over to the City Jail,' and he repeated that twice." A second, telegraphic request was also summarily denied, in a telegram signed by "Eugene 'Bull' Connor," with the added information that permits could be issued only by the full City Commission, a three-man body consisting of Commissioner Connor and two others.¹ According to petition-

1. The uncontradicted testimony relating to the rebuffs of petitioners' attempts to obtain a permit is set out in footnotes 9 and 10 of the majority opinion. Petitioners were prevented by a ruling of the trial court from introducing further proof of the intransigence of Commissioner Connor and the other city officials toward any effort by Negroes to protest segregation and racial injustice. The attitude of the city administration in general and of its Public Safety Commissioner in particular are a matter of public record, of course, and are familiar to this Court from previous litigation. See *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 86 S.Ct. 211, 15 L.Ed.2d 176 (1965); *Shuttlesworth v. City of Birmingham*, 376 U.S. 339, 84 S.Ct. 795, 11 L.Ed.2d 766 (1964); *Shuttlesworth v. City of Birmingham*, 373 U.S.

262, 83 S.Ct. 1130, 10 L.Ed.2d 335 (1963); *Gober v. City of Birmingham*, 373 U.S. 374, 83 S.Ct. 1311, 10 L.Ed.2d 419 (1963); *In re Shuttlesworth*, 369 U.S. 35, 82 S.Ct. 551, 7 L.Ed.2d 548 (1962). The United States Commission on Civil Rights found continuing abuse of civil rights protesters by the Birmingham police, including use of dogs, clubs, and firehoses. 1963 Report of the United States Commission on Civil Rights 114 (Government Printing Office, 1963). Commissioner Eugene "Bull" Connor, a self-proclaimed white supremacist (see *Congress and the Nation 1945-1964: A Review of Government and Politics in the Post-war Years 1604* (Congressional Quarterly Service, 1965)) made no secret of his personal attitude toward the rights of Negroes and the decisions of this Court. He vowed that racial integration would

ers' offer

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of proof, the truth of which is assumed for purposes of this case, parade permits had uniformly been issued for all other groups by the city clerk on the request of the traffic bureau of the police department, which was under Commissioner Connor's direction. The requirement that the approval of the full Commission be obtained was applied only to this one group.

Understandably convinced that the City of Birmingham was not going to authorize their demonstrations under any circumstances, petitioners proceeded with their plans despite Commissioner Connor's orders. On Wednesday, April 10, at 9 in the evening, the city filed in a state circuit court a bill of complaint seeking an *ex parte* injunction. The complaint recited that petitioners were engaging in a series of demonstrations as "part of a massive effort * * * to forcibly integrate all business establishments, churches, and other institutions" in the city, with the result that the police department was strained in its resources and the safety, peace, and tranquility were threatened. It was alleged as particularly menacing that petitioners were planning to conduct "kneel-in" demonstrations at churches where their presence was not wanted. The city's police dogs were said to be in danger of their lives. Faced with these recitals, the Circuit Court issued the injunction in the form requested, and in effect ordered petitioners and all other persons having notice of the order to refrain for an unlimited time from carrying on any demonstrations without a permit. A permit, of course, was clearly unobtainable;

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the city would not have sought this injunc-

tion if it had any intention of issuing one.

Petitioners were served with copies of the injunction at various times on Thursday and on Good Friday. Unable to believe that such a blatant and broadly drawn prior restraint on their First Amendment rights could be valid, they announced their intention to defy it and went ahead with the planned peaceful demonstrations on Easter weekend. On the following Monday, when they promptly filed a motion to dissolve the injunction, the court found them in contempt, holding that they had waived all their First Amendment rights by disobeying the court order.

These facts lend no support to the court's charges that petitioners were presuming to act as judges in their own case, or that they had a disregard for the judicial process. They did not flee the jurisdiction or refuse to appear in the Alabama courts. Having violated the injunction, they promptly submitted themselves to the courts to test the constitutionality of the injunction and the ordinance it parroted. They were in essentially the same position as persons who challenge the constitutionality of a statute by violating it, and then defend the ensuing criminal prosecution on constitutional grounds. It has never been thought that violation of a statute indicated such a disrespect for the legislature that the violator always must be punished even if the statute was unconstitutional. On the contrary, some cases have required that persons seeking to challenge the constitutionality of a statute first violate it to establish their standing to sue.² Indeed, it shows no disrespect for law to violate a statute on the ground that it is unconstitutional and then to submit one's case to the courts with the willingness to accept the penalty if the statute is held to be valid.

never come to Birmingham, and wore a button inscribed "Never" to advertise that vow. Yet the Court indulges in speculation that these civil rights protesters might have obtained a permit

from this city and this man had they made enough repeated applications.

2. See *United Public Workers of America v. Mitchell*, 330 U.S. 75, 86-94, 67 S.Ct. 556, 562-567, 91 L.Ed. 754 (1947).

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The Court concedes that "[t]he generality of the language contained in the Birmingham parade ordinance upon which the injunction was based would unquestionably raise substantial constitutional issues concerning some of its provisions."³ Ante, p. 1830. That concession is well-founded but minimal. I believe it is patently unconstitutional on its face. Our decisions have consistently held that picketing and parading are means of expression protected by the First Amendment, and that the right to picket or parade may not be subjected to the unfettered discretion of local officials. *Cox v. State of Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); *Edwards v. South Carolina*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); *Thornhill v. State of Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). Although a city may regulate the manner of use of its streets and sidewalks in the interest of keeping them open for the movement of traffic, it may not allow local officials unbridled discretion to decide who shall be allowed to parade or picket and who shall not. "Wherever the title of streets and parks may rest, they have immemorially been held

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in trust for the

3. The opinion does speculate that the Alabama courts might have saved the ordinance by giving the licensing authority granted in the ordinance "a narrow and precise scope," as did the New Hampshire courts in *Cox v. State of New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941), and *Poulos v. State of New Hampshire*, 345 U.S. 395, 73 S.Ct. 760, 97 L.Ed. 1105 (1953). This suggestion ignores the fact that the statute in *Cox* and the ordinance in *Poulos* merely provided that licenses for parades and certain other gatherings must be obtained. They did not authorize local officials to determine whether the proposed parade was consistent with "the public welfare, peace, safety, health, decency, good order, morals or convenience," as does the Birmingham ordinance involved in this case, and so it was perfectly consistent with the statutory language for the New Hampshire Supreme Court to hold that under the statute and ordinance parade applicants

use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the street and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." *Hague v. C. I. O.*, 307 U.S. 496, 515-516, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939) (opinion of Mr. Justice Roberts). When local officials are given totally unfettered discretion to decide whether a proposed demonstration is consistent with "public welfare, peace, safety, health, decency, good order, morals or convenience," as they were in this case, they are invited to act as censors over the views that may be presented to the public.⁴ The unconstitutionality of the ordinance is compounded, of course, when there is convincing evidence that the officials have in fact used

had a right to a license "with regard only to considerations of time, place and manner so as to conserve the public convenience." 312 U.S., at 575-576, 61 S.Ct., at 765. By contrast, the Alabama courts could only give a narrow and precise scope to the Birmingham ordinance by repealing some of its language.

4. *Staub v. City of Baxley*, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958); *Kunz v. People of State of New York*, 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280 (1951); *Niemotko v. State of Maryland*, 340 U.S. 268, 71 S.Ct. 325, 328, 95 L.Ed. 267 (1951); *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). "I believe that the First and Fourteenth Amendments require that if the streets of a town are open to some views, they must be open to all." *Cox v. State of Louisiana*, 379 U.S. 536, 580, 85 S.Ct. 453, 469, 13 L.Ed.2d 471 (1965) (opinion of Mr. Justice Black).

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their power to deny permits to organizations whose views they dislike.⁵ The record in this case hardly suggests that Commissioner Connor and the other city officials were motivated in prohibiting civil rights picketing only by their overwhelming concern for particular traffic problems. Petitioners were given to

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understand that under no circumstances would they be permitted to demonstrate in Birmingham, not that a demonstration would be approved if a time and place were selected that would minimize the traffic difficulties. The only circumstance that the court can find to justify anything other than a *per curiam* reversal is that Commissioner Connor had the foresight to have the unconstitutional ordinance included in an *ex parte* injunction issued without notice or hearing or any showing that it was impossible to have notice or a hearing, forbidding the world at large (insofar as it knew of the order) to conduct demonstrations in Birmingham without the consent of the city officials. This injunction was such potent magic that it transformed the command of an unconstitutional statute into an impregnable barrier, challengeable only in what likely would have been protracted legal proceedings and entirely superior in the meantime even to the United States Constitution.

I do not believe that giving this Court's seal of approval to such a gross misuse of the judicial process is likely to lead to greater respect for the law any more

than it is likely to lead to greater protection for First Amendment freedoms. The *ex parte* temporary injunction has a long and odious history in this country, and its susceptibility to misuse is all too apparent from the facts of the case. As a weapon against strikes, it proved so effective in the hands of judges friendly to employers that Congress was forced to take the drastic step of removing from federal district courts the jurisdiction to issue injunctions in labor disputes.⁶ The labor injunction fell into disrepute largely because it was abused in precisely the same way that the injunctive power was abused in this case. Judges who were not sympathetic to the union cause commonly issued, without notice or

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hearing, broad restraining orders addressed to large numbers of persons and forbidding them to engage in acts that were either legally permissible or, if illegal, that could better have been left to the regular course of criminal prosecution. The injunctions might later be dissolved, but in the meantime strikes would be crippled because the occasion on which concerted activity might have been effective had passed.⁷ Such injunctions so long discredited as weapons against concerted labor activities, have now been given new life by this Court as weapons against the exercise of First Amendment freedoms. Respect for the courts and for judicial process was not increased by the history of the labor injunction.⁸

a simple, judicial device to an enveloping code of prohibited conduct, absorbing, *en masse*, executive and police functions and affecting the livelihood, and even lives, of multitudes. Especially those zealous for the unimpaired prestige of our courts have observed how the administration of law by decrees which through vast and vague phrases surmount law, undermines the esteem of courts upon which our reign of law depends. Not government, but 'government by injunction,' characterized by the consequences of a criminal prosecution without its safeguards, has been challenged." Frankfurter & Greene, *supra*, at 200.

5. *Niemotko v. State of Maryland*, *supra*.

6. The Norris-LaGuardia Act, 1932, 47 Stat. 70, 29 U.S.C. §§ 101-115.

7. Frankfurter & Greene, *The Labor Injunction* 47-81 (1930); Cox & Bok, *Cases and Materials on Labor Law* 101-107 (1962).

8. "The history of the labor injunction in action puts some matters beyond question. In large part, dissatisfaction and resentment are caused, first, by the refusal of courts to recognize that breaches of the peace may be redressed through criminal prosecution and civil action for damages, and, second, by the expansion of

Nothing in our prior decisions, or in the doctrine that a party subject to a temporary injunction issued by a court of competent jurisdiction with power to decide a dispute properly before it must normally challenge the injunction in the courts rather than by violating it, requires that we affirm the convictions in this case. The majority opinion in this case rests essentially on a single precedent, and that a case the authority of

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which has clearly been undermined by subsequent decisions. *Howat v. State of Kansas*, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550 (1922), was decided in the days when the labor injunction was in fashion. Kansas had adopted an Industrial Relations Act, the purpose of which in effect was to provide for compulsory arbitration of labor disputes by a neutral administrative tribunal, the "Court of Industrial Relations." Pursuant to its jurisdiction to investigate and perhaps improve labor conditions in the coal mining industry, the "Court" subpoenaed union leaders to appear and testify. In addition, the State obtained an injunction to prevent a strike while the matter was before the "Court." The union leaders disobeyed both the subpoena and the injunction, and sought to challenge the constitutionality of the Industrial Relations Act in the ensuing contempt proceeding. The Kansas Supreme Court held that the constitutionality of the Act could not be challenged in a contempt proceeding, and this Court upheld that determination.

9. The attempt in footnote 6 of the majority opinion to distinguish *In re Green* is nothing but an attempt to alter the holding of that case. The opinion of the Court states flatly that "a state court is without power to hold one in contempt for violating an injunction that the state court had no power to enter by reason of federal pre-emption." 369 U.S., at 692, 82 S.Ct., at 1117 (footnote omitted). The alleged circumstance that the court issuing the injunction had agreed to its violation as an appropriate means of testing its validity was considered only in a con-

Insofar as *Howat v. State of Kansas* might be interpreted to approve an absolute rule that any violation of a void court order is punishable as contempt, it has been greatly modified by later decisions. In *In re Green*, 369 U.S. 689, 82 S.Ct. 1114, 8 L.Ed.2d 198 (1962), we reversed a conviction for contempt of a state injunction forbidding labor picketing because the petitioner was not allowed to present evidence that the labor dispute was arguably subject to the jurisdiction of the National Labor Relations Board and hence not subject to state regulation. If an injunction can be challenged on the ground that it deals with a matter arguably subject to the jurisdiction of the National Labor Relations Board, then *a fortiori* it can be challenged on First Amendment grounds.⁹

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It is not necessary to question the continuing validity of the holding in *Howat v. State of Kansas*, however, to demonstrate that neither it nor the *Mine Workers*¹⁰ case supports the holding of the majority in this case. In *Howat* the subpoena and injunction were issued to enable the Kansas Court of Industrial Relations to determine an underlying labor dispute. In the *Mine Workers* case, the District Court issued a temporary anti-strike injunction to preserve existing conditions during the time it took to decide whether it had authority to grant the Government relief in a complex and difficult action of enormous importance to the national economy. In both cases the

curing opinion. Although the petitioner in *Green* had attempted to challenge the order in court before violating it, we did not rely on that fact in holding that the order was void. Nor is it clear to me why the Court regards this fact as important, unless it means to imply that the petitioners in this case would have been free to violate the court order if they had first made a motion to dissolve in the trial court.

10. *United States v. United Mine Workers*, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884 (1947).

orders were of questionable legality, but in both cases they were reasonably necessary to enable the court or administrative tribunal to decide an underlying controversy of considerable importance before it at the time. This case involves an entirely different situation. The Alabama Circuit Court did not issue this temporary injunction to preserve existing conditions while it proceeded to decide some underlying dispute. There was no underlying dispute before it, and the court in practical effect merely added a judicial signature to a preexisting criminal ordinance. Just as the court had no need to issue the injunction to preserve its ability to

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decide some underlying dispute, the city had no need of an injunction to impose a criminal penalty for demonstrating on the streets without a permit. The ordinance already accomplished that. In point of fact, there is only one apparent reason why the city sought this injunction and why the court issued it: to make it possible to punish petitioners for contempt rather than for violating the ordinance, and thus to immunize the unconstitutional statute and its unconstitutional application from any attack. I regret that this strategy has been so successful.

It is not necessary in this case to decide precisely what limits should be set to the *Mine Workers* doctrine in cases involving violations of the First Amendment. Whatever the scope of that doctrine, it plainly was not intended to give a State the power to nullify the United States Constitution by the simple process of incorporating its unconstitutional criminal statutes into judicial decrees. I respectfully dissent.

Mr. Justice DOUGLAS, with whom THE CHIEF JUSTICE, Mr. Justice BRENNAN, and Mr. Justice FORTAS concur, dissenting.

We sit as a court of law functioning primarily as a referee in the federal system. Our function in cases coming to us from state courts is to make sure that

state tribunals and agencies work within the limits of the Constitution. Since the Alabama courts have flouted the First Amendment, I would reverse the judgment.

Picketing and parading are methods of expression protected by the First Amendment against both state and federal abridgment. *Edwards v. South Carolina*, 372 U.S. 229, 235-236, 83 S.Ct. 680, 683-684, 9 L.Ed.2d 697; *Cox v. State of Louisiana*, 379 U.S. 536, 546-548, 85 S.Ct. 453, 459-461, 13 L.Ed.2d 471. Since they involve more than speech itself and implicate street traffic, the accommodation of the public and the like, they may be regulated as to the times

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and places of the demonstrations. *Schneider v. State*, 308 U.S. 147, 160-161, 60 S.Ct. 146, 150-151, 84 L.Ed. 155; *Cox v. State of New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049; *Poulos v. State of New Hampshire*, 345 U.S. 395, 405-406, 73 S.Ct. 760, 766-767, 97 L.Ed. 1105. But a State cannot deny the right to use streets or parks or other public grounds for the purpose of petitioning for the redress of grievances. See *Hague v. C. I. O.*, 307 U.S. 496, 515-516, 59 S.Ct. 954, 963-964, 83 L.Ed. 1423; *Schneider v. State*, 308 U.S. 147, 163, 60 S.Ct. 146, 151-152, 84 L.Ed. 155; *Cox v. State of New Hampshire*, 312 U.S. 569, 574, 61 S.Ct. 762, 765, 85 L.Ed. 1049; *Valentine v. Chrestensen*, 316 U.S. 52, 54, 62 S.Ct. 920, 921, 86 L.Ed. 1262; *Jamison v. State of Texas*, 318 U.S. 413, 415-416, 63 S.Ct. 669, 671-672, 87 L.Ed. 869.

The rich can buy advertisements in newspapers, purchase radio or television time, and rent billboard space. Those less affluent are restricted to the use of handbills (*Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105, 108, 63 S.Ct. 870, 872, 87 L.Ed. 1292) or petitions, or parades, or mass meetings. This "right of the people peaceably to assemble, and to petition the Government for a redress of grievances," guaranteed by the First Amendment, applicable to the States by

reason of the Fourteenth (Edwards v. South Carolina, *supra*, 372 U.S. at 235, 83 S.Ct. at 683), was flouted here.

The evidence shows that a permit was applied for. Mrs. Lola Hendricks, a member of the Alabama Christian Movement for Human Rights, authorized by its president, Reverend Shuttlesworth, on April 3, went to the police department and asked to see the person in charge of issuing permits. She then went to the office of Commissioner Eugene "Bull" Connor and told him that "we came up to apply or see about getting a permit for picketing, parading, demonstrating." She asked Connor for the permit, "asked if he could issue the permit, or other persons who would refer me to, persons who would issue a permit." Commissioner Connor replied, "No, you will not get a permit in Birmingham, Alabama to picket. I will picket you over to the City Jail." On April 5, petitioner Shuttlesworth sent a telegram to Commissioner Connor requesting a permit to picket on designated sidewalks

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on April 5 and 6. The message stated that "the normal rules of picketing" would be observed. The same day, Connor wired back a reply stating that he could not individually grant a permit, that it was the responsibility of the entire Commission and that he "insist[ed] that you and your people do not start any picketing on the streets in Birmingham, Alabama." Petitioners' efforts to show that the City Commission did not grant permits, but that they were granted by the city clerk at the request of the traffic division were cut off.

The record shows that petitioners did not deliberately attempt to circumvent the permit requirement. Rather they diligently attempted to obtain a permit and were rudely rebuffed and then reasonably concluded that any further attempts would be fruitless.

The right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to

make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it is invalid on its face. *Lovell v. City of Griffin*, 303 U.S. 444, 452-453, 58 S.Ct. 666, 669, 82 L.Ed. 949; *Thornhill v. State of Alabama*, 310 U.S. 88, 97, 60 S.Ct. 736, 741-742, 84 L.Ed. 1093; *Jones v. City of Opelika*, 316 U.S. 584, 602, 62 S.Ct. 1231, 1241-1242, 86 L.Ed. 1691, adopted *per curiam* on rehearing, 319 U.S. 103, 104, 63 S.Ct. 890, 87 L.Ed. 1290; *Cantwell v. State of Connecticut*, 310 U.S. 296, 305-306, 60 S.Ct. 900, 904, 84 L.Ed. 1213; *Thomas v. Collins*, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430; *Staub v. City of Baxley*, 355 U.S. 313, 319, 78 S.Ct. 277, 280-281, 2 L.Ed.2d 302.

By like reason, where a permit has been arbitrarily denied one need not pursue the long and expensive route to this Court to obtain a remedy. The reason is the same in both cases. For if a person must pursue his judicial remedy before he may speak, parade, or assemble, the occasion when protest is desired or needed will have become history and any later speech, parade, or assembly will be futile or pointless.

Howat v. State of Kansas, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550, states the general rule that court injunctions are to be obeyed until error is found by normal and orderly review procedures. See

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United States v. United Mine Workers, 330 U.S. 258, 293-294, 67 S.Ct. 677, 695-696, 91 L.Ed. 884. But there is an exception where "the question of jurisdiction" is "frivolous and not substantial." *Id.*, at 293, 67 S.Ct., at 695, 696. Moreover, a state court injunction is not *per se* sacred where federal constitutional questions are involved. In *re Green*, 369 U.S. 689, 82 S.Ct. 1114, 8 L.Ed.2d 198, held that contempt could not be imposed without a hearing where the state decree bordered the federal domain in labor relations and only a hearing could determine whether there was federal pre-emption. In the present case the collision between this state court decree and the

First Amendment is so obvious that no hearing is needed to determine the issue.

As already related, petitioners made two applications to Commissioner "Bull" Connor for a permit and were turned down. At the trial, counsel for petitioners offered to prove through the city clerk that the Commission never has granted a permit, the issuing authority being the city clerk who acts at the request of the traffic division. But he was not allowed to answer the question. And when asked to describe the practice for granting permits an objection was raised and sustained.

It is clear that there are no published rules or regulations governing the manner of applying for permits, and it is clear from the record that some permits are issued. One who reads this record will have, I think, the abiding conviction that these people were denied a permit solely because their skin was not of the right color and their cause was not popular.

A court does not have *jurisdiction* to do what a city or other agency of a State lacks *jurisdiction* to do. The command of the Fourteenth Amendment, through which the First Amendment is made applicable to the States, is that no "State" shall deprive any person of "liberty" without due process of law. The decree of a state court is "state" action in the constitutional sense (Shelley v.

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Kraemer, 334 U.S. 1, 14-18, 68 S.Ct. 836, 842-845, 92 L.Ed. 1161), as much as the action of the state police, the state prosecutor, the state legislature, or the Governor himself. An ordinance—unconstitutional on its face or patently unconstitutional as applied—is not made sacred by an unconstitutional injunction that enforces it. It can and should be flouted in the manner of the ordinance itself. Courts as well as citizens are not free "to ignore all the procedures of the law," to use the Court's language. The "constitutional freedom" of which the Court speaks can be won only if judges honor the Constitution.

87 S.Ct.—116

Mr. Justice BRENNAN, with whom THE CHIEF JUSTICE, Mr. Justice DOUGLAS, and Mr. Justice FORTAS join, dissenting.

Under cover of exhortation that the Negro exercise "respect for judicial process," the Court empties the Supremacy Clause of its primacy by elevating a state rule of judicial administration above the right of free expression guaranteed by the Federal Constitution. And the Court does so by letting loose a devastatingly destructive weapon for suppression of cherished freedoms heretofore believed indispensable to maintenance of our free society. I cannot believe that this distortion in the hierarchy of values upon which our society has been and must be ordered can have any significance beyond its function as a vehicle to affirm these contempt convictions.

I.

Petitioners are eight Negro ministers. They were convicted of criminal contempt for violation of an *ex parte* injunction issued by the Circuit Court of Jefferson County, Alabama, by engaging in street parades without a municipal permit on Good Friday and Easter Sunday 1963. These were the days when

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Birmingham was a world symbol of implacable official hostility to Negro efforts to gain civil rights, however peacefully sought. The purpose of these demonstrations was peaceably to publicize and dramatize the civil rights grievances of the Negro people. The underlying permit ordinance made it unlawful "to organize or hold * * * or to take part or participate in, any parade or procession or other public demonstration on the streets * * *" without a permit. A permit was issuable by the City Commission "unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused."

Attempts by petitioners at the contempt hearing to show that they tried to obtain a permit but were rudely re-

buffed by city officials were aborted when the trial court sustained objections to the testimony. It did appear, however, that on April 3, a member of the Alabama Christian Movement for Human Rights (ACMHR) was sent by one of the petitioners, the Reverend Mr. Shuttlesworth, to Birmingham city hall to inquire about permits for future demonstrations. The member stated at trial:

"I asked [Police] Commissioner Connor for the permit, and asked if he could issue the permit, or other persons who would refer me to, persons who would issue a permit. He said, 'No, you will not get a permit in Birmingham, Alabama to picket. I will picket you over to the City Jail,' and he repeated that twice."

Two days later the Reverend Mr. Shuttlesworth sent a telegram to Police Commissioner Connor requesting a permit on behalf of ACMHR to picket on given dates "against the injustices of segregation and discrimination." Connor replied that the permit could be granted only by the full Commission and stated, "I insist that you and your people do not start any picketing on the streets in

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Birmingham, Alabama."

Petitioners were also frustrated in their attempts at the contempt hearing to show that permits were granted, not by the Commission, but by the city clerk at the request of the traffic department, and that they were issued in a discriminatory manner.

On April 6-7 and April 9-10, Negroes were arrested for parading without a permit. Late in the night of April 10, the city requested and immediately obtained an *ex parte* injunction without prior notice to petitioners. Notice of the issuance was given to five of the petitioners on April 11.¹ The decree tracked the wording of the permit ordinance, except that

it was still broader and more pervasive. It enjoined:

" * * * engaging in, sponsoring, inciting or encouraging mass street parades or mass processions or like demonstrations without a permit, trespass on private property after being warned to leave the premises by the owner or person in possession of said private property, congregating on the street or public places into mobs, and unlawfully picketing business establishments or public buildings in the City of Birmingham, Jefferson County, State of Alabama or performing acts calculated to cause breaches of the peace in the City of Birmingham, Jefferson County, in the State of Alabama or from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing or other like unlawful conduct or from violating the ordinances of the City of Birmingham and the Statutes of the State of Alabama or from doing any acts designed to consummate conspiracies to engage in said unlawful

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acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts, or from engaging in acts and conduct customarily known as 'kneel-ins' in churches in violation of the wishes and desires of said churches. * * * "

Several of the Negro ministers issued statements that they would refuse to comply with what they believed to be, and is indeed, a blatantly unconstitutional restraining order.

On April 12, Good Friday, a planned march took place, beginning at a church in the Negro section of the city and continuing to city hall. The police, who were notified in advance by one of the petitioners of the time and route of the march, blocked the streets to traffic in the area of the

1. Two of petitioners received no personal notice of the injunction at all. The trial court found that they were aware of the

injunction, a conclusion here challenged. Because of the disposition I would make of this case, I would not reach this issue.

church and excluded white persons from the Negro area. Approximately 50 persons marched, led by three petitioners, Martin Luther King, Ralph Abernathy, and Shuttlesworth. A large crowd of Negro onlookers which had gathered outside the church remained separate from the procession. A few blocks from the church the police stopped the procession and arrested, and jailed, most of the marchers, including the three leaders.

On Easter Sunday another planned demonstration was conducted. The police again were given advance notice, and again blocked the streets to traffic and white persons in the vicinity of the church. Several hundred persons were assembled at the church. Approximately 50 persons who emerged from the church began walking peaceably. Several blocks from the church the procession was stopped, as on Good Friday, and about 20 persons, including five petitioners, were arrested. The participants in both parades were in every way orderly; the only episode of violence, according a police inspector, was rock throwing by three onlookers on Easter Sunday, after petitioners were arrested; the three rock throwers were immediately taken into custody by the police.

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On Monday, April 15, petitioners moved to dissolve the injunction, and the city initiated criminal contempt proceedings against petitioners. At the hearing, held a week later, the Jefferson County Court considered the contempt charge first. Petitioners urged that the injunction and underlying permit ordinance were impermissibly vague prior restraints on exercise of First Amendment rights and that the ordinance had been discriminatorily applied. The court, however, limited evidence primarily to two questions: notice of and violation of the injunction. The court stated that "the validity of its injunction order stands upon its prima facie authority to execute the same." Petitioners were

found guilty of criminal contempt and sentenced to five days in jail and a \$50 fine. The Alabama Supreme Court, adopting the reasoning of *United States v. United Mine Workers*, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884, applicable to federal court orders, affirmed, holding that the validity of the injunction and underlying permit ordinance could not be challenged in a contempt proceeding. 279 Ala. 53, 181 So.2d 493.

II.

The holding of the Alabama Supreme Court, and the affirmance of its decision by this Court, rest on the assumption that petitioners may be criminally punished although the parade ordinance and the injunction be unconstitutional on their faces as in violation of the First Amendment, and even if the parade ordinance was discriminatorily applied. It must therefore be assumed, for purposes of review of the Alabama Supreme Court's decision, and in assessing the Court's affirmance, that petitioners could successfully sustain the contentions (into which the Alabama courts refused to inquire) that the ordinance and injunction are in fact facially unconstitutional as excessively vague prior restraints on First Amendment rights and that the ordinance had been discriminatorily

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applied. It should be noted, without elaboration, that there is clearly sound basis in fact for this assumption: the Alabama Court of Appeals, in a case involving one of these petitioners, has held that the ordinance is "void for vagueness because of overbroad, and consequently meaningless, standards for the issuance of permits for processions," and that the ordinance has been enforced discriminatorily. *Shuttlesworth v. City of Birmingham*, 43 Ala.App. 68, 180 So.2d 114 (1965). However, it is not the merits of such claims, but the refusal of the Alabama courts to consider them, that is here involved.²

2. Thus not an issue here is the extent of the State's right to control the manner of

use of its streets and sidewalks. Since the Alabama courts refused to consider

Like the Court, I start with the premise that States are free to adopt rules of judicial administration designed to require respect for their courts' orders. See *Howat v. State of Kansas*, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550.³ But this does not mean that this

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valid state interest does not admit of collision with other and more vital interests. Surely the proposition requires no citation that a valid state interest must give way when it infringes on rights guaranteed by the Federal Constitution. The plain meaning of the Supremacy Clause requires no less.

In the present case we are confronted with a collision between Alabama's interest in requiring adherence to orders of its courts and the constitutional prohibition against abridgment of freedom of speech, more particularly "the right of the people peaceably to assemble," and

the merits of petitioners' constitutional claims it must be assumed for purposes of review that the ordinance and injunction were invalid attempts to exercise such control.

In *Kasper v. Brittain*, 245 F.2d 92, both the District Court and the Court of Appeals afforded the appellant full consideration of his First Amendment contention and found it to be without merit. In that circumstance, the language of the opinion of the Court of Appeals, 245 F.2d, at 96, presented no issue for this Court's review.

3. It should be noted that the State's interest in the integrity of its injunctive remedy in the present case is of a different order than that embodied in our *Mine Workers* rule. The injunctive remedy was not here necessary to preserve the *status quo* while a case was pending decision, but was merely the conversion of a broad statutory restraint into a broader injunctive restraint of indefinite duration, unrelated to any pending litigation. This Court's decision in *Mine Workers* was directed to the integrity of the District Court's power "to preserve existing conditions while it was determining its own authority to grant injunctive relief." *United States v. United Mine Workers*, 330 U.S. 258, 293, 67 S.Ct. 677, 695,

the right "to petition the Government for a redress of grievances." See, e. g., *Stromberg v. People of State of California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117; *De Jonge v. State of Oregon*, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278; *Thornhill v. State of Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093; *Edwards v. State of South Carolina*, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 2d 697; *Cox v. State of Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471. Special considerations have time and again been deemed by us to attend protection of these freedoms in the face of state interests the vindication of which results in prior restraints upon their exercise,⁴ or their regulation in a vague or overbroad manner,⁵ or in a way which gives unbridled discretion to limit their exercise to an individual or group of individuals.⁶ To give these freedoms the necessary "breathing space to survive," *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405,

91 L.Ed. 884. In *Howat v. State of Kansas*, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550, the state court's order related to a pending proceeding before the state "Court of Industrial Relations." The State's interest is here further limited by the traditional rule of equity jurisdiction that equity does not normally restrain criminal acts but that the State should proceed by criminal prosecution with its attending safeguards.

4. See, e. g., *Near v. State of Minnesota*, 283 U.S. 697, 713-720, 51 S.Ct. 625, 630-633, 75 L.Ed. 1357; *Freedman v. State of Maryland*, 380 U.S. 51, 57-60, 85 S.Ct. 734, 738-740, 13 L.Ed.2d 649.
5. See, e. g., *Keyishian v. Board of Regents*, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629; *Baggett v. Bullitt*, 377 U.S. 360, 372-373, 84 S.Ct. 1316, 1322-1323, 12 L.Ed.2d 377; *Cramp v. Board of Public Instruction*, 368 U.S. 278, 287-288, 82 S.Ct. 275, 280-281, 7 L.Ed.2d 285.
6. See, e. g., *Staub v. City of Baxley*, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302; *Lovell v. City of Griffin*, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; *Schneider v. State*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213.

the Court has modified traditional rules of standing and prematurity. See *Domkowski v.*

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Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22. We have molded both substantive rights and procedural remedies in the face of varied conflicting interests to conform to our overriding duty to insulate all individuals from the "chilling effect" upon exercise of First Amendment freedoms generated by vagueness, overbreadth and unbridled discretion to limit their exercise.

The vitality of First Amendment protections has, as a result, been deemed to rest in large measure upon the ability of the individual to take his chances and express himself in the face of such restraints, armed with the ability to challenge those restraints if the State seeks to penalize that expression. The most striking examples of the right to speak first and challenge later, and of peculiar moment for the present case, are the cases concerning the ability of an individual to challenge a permit or licensing statute giving broad discretion to an individual or group, such as the Birmingham permit ordinance, despite the fact that he did not attempt to obtain a permit or license. In *Staub v. City of Baxley*, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302, the accused, prosecuted for soliciting members for an organization without a permit, contended that the ordinance was invalid on its face because it made exercise of freedom of speech contingent upon the will of the issuing authority and therefore was an invalid prior restraint—the same contention made by petitioners with regard to the Birmingham ordinance. The Georgia Court of Appeals, 94 Ga.App. 18, 93 S.E.2d 375, held that "[h]aving made no effort to secure a license the defendant is in no position to claim that any section of the ordinance is invalid or unconstitutional * * *." *Staub v. City of Baxley*, supra, at 318, 78 S.Ct. at 280. We refused to regard this holding as an adequate nonfederal ground for decision, stating, supra, at 319, 78 S.Ct. at 281:

"The decisions of this Court have uniformly held that the failure to apply for a license under an ordinance which on its face violates the Constitution

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does not preclude review in this Court of a judgment of conviction under such an ordinance. *Smith v. Cahoon*, 283 U.S. 553, 562, 51 S.Ct. 582, 585, 75 L.Ed. 1264; *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669, 82 L.Ed. 949. 'The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands.' *Jones v. City of Opelika*, 316 U.S. 584, 602, 62 S.Ct. 1231, 1242, 86 L.Ed. 1691, dissenting opinion, adopted *per curiam* on rehearing, 319 U.S. 103, 104, 63 S.Ct. 890, 87 L.Ed. 1290."

See also *Cox v. State of Louisiana*, 379 U.S. 536, 556–557, 85 S.Ct. 453, 465–466, 13 L.Ed.2d 471.

Yet by some inscrutable legerdemain these constitutionally secured rights to challenge prior restraints invalid on their face are lost if the State takes the precaution to have some judge append his signature to an *ex parte* order which recites the words of the invalid statute. The State neatly insulates its legislation from challenge by mere incorporation of the identical stifling, overbroad, and vague restraints on exercise of the First Amendment freedoms into an even more vague and pervasive injunction obtained invisibly and upon a stage darkened lest it be open to scrutiny by those affected. The *ex parte* order of the judicial officer exercising broad equitable powers is glorified above the presumably carefully considered, even if hopelessly invalid, mandates of the legislative branch. I would expect this tribunal, charged as it is with the ultimate responsibility to safeguard our constitutional freedoms, to regard the *ex parte* injunctive tool to be far more dangerous than statutes to First Amendment freedoms. One would expect this Court particularly to remem-

ber the stern lesson history taught courts, in the context of the labor injunction, that the *ex parte* injunction represents the most devastating of restraints on constitutionally protected activities. Today, however, the weapon is given complete invulnerability in the one context in which the danger from broad

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prior restraints has been thought to be the most acute. Were it not for the *ex parte* injunction, petitioners could have paraded first and challenged the permit ordinance later. But because of the *ex parte* stamp of a judicial officer on a copy of the invalid ordinance they barred not only from challenging the permit ordinance, but also the potentially more stifling yet unconsidered restraints embodied in the injunction itself.

The Court's religious deference to the state court's application of the *Mine Workers'* rule in the present case is in stark contrast to the Court's approach in *In re Green*, 369 U.S. 689, 82 S.Ct. 1114, 8 L.Ed.2d 198. The state court issued an *ex parte* injunction against certain labor picketing. Green, counsel for the union, advised the union that the order was invalid and that it should continue to picket so that the order could be tested in a contempt hearing. The court held Green in contempt without allowing any challenge to the order. This Court stated that the issue was "whether the state court was trenching on the federal domain." *In re Green*, supra, at 692, 82 S.Ct. at 1116. It remanded for a hearing to determine whether the activity enjoined was "arguably" subject to Labor Board jurisdiction. In *Green*, therefore, we rejected blind effectuation of the State's interest in requiring compliance with its court's *ex parte* injunctions because of the "arguable" collision with federal labor policy. Yet in the present case the Court affirms the determination of a state court which was willing to assume that its *ex parte* order and the underlying statute were repugnant on their face to the First Amendment of the Federal Constitution. One must wonder

what an odd inversion of values it is to afford greater respect to an "arguable" collision with federal labor policy than an assumedly patent interference with constitutional rights so high in the scale of constitutional values that this Court has described them as being "delicate and vulnerable, as well as supremely

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precious in our society." *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405.

It is said that petitioners should have sought to dissolve the injunction before conducting their processions. That argument is plainly repugnant to the principle that First Amendment freedoms may be exercised in the face of legislative prior restraints, and *a fortiori* of *ex parte* restraints broader than such legislative restraints, which may be challenged in any subsequent proceeding for their violation. But at all events, prior resort to a motion to dissolve this injunction could not be required because of the complete absence of any time limits on the duration of the *ex parte* order. See *Freedman v. State of Maryland*, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649. Even the Alabama Supreme Court's Rule 47 leaves the timing of full judicial consideration of the validity of the restraint to that court's untrammelled discretion.

The shifting of the burden to petitioners to show the lawfulness of their conduct prior to engaging in enjoined activity also is contrary to the principle, settled by *Speiser v. Randall*, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460, that

"The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone than if the State must bear these burdens. * * * In practical operation, therefore, this procedural device must necessarily produce a result which the State could not command directly. It can only result

in a deterrence of speech which the Constitution makes free."

The suggestion that petitioners be muffled pending outcome of dissolution proceedings without any measurable time limits is particularly inappropriate in the setting of this case. Critical to the plain exercise of the right of protest was the timing of that exercise. First, the marches were part of a program to arouse community

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support for petitioners' assault on segregation there. A cessation of these activities, even for a short period, might deal a crippling blow to petitioners' efforts. Second, in dramatization of their cause, petitioners, all ministers, chose April 12, Good Friday, and April 14, Easter Sunday, for their protests hoping to gain the attention to their cause which such timing might attract. Petitioners received notice of the order April 11. The ability to exercise protected protest at a time when such exercise would be effective must be as protected as the beliefs themselves. Cf. *Ex parte Jackson*, 96 U.S. 727, 733, 24 L.Ed. 877; *Grosjean v. American Press Co.*, 297 U.S. 233, 248-250, 56 S.Ct. 444, 448-449, 80 L.Ed. 660; *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669, 82 L.Ed. 949. It is a flagrant denial of constitutional guarantees to balance away this principle in the name of "respect for judicial process." To preach "respect" in this context is to deny the right to speak at all.

The Court today lets loose a devastatingly destructive weapon for infringement of freedoms jealously safeguarded not so much for the benefit of any given group of any given persuasion as for the benefit of all of us. We cannot permit fears of "riots" and "civil disobedience" generated by slogans like "Black Power" to divert our attention from what is here at stake—not violence or the right of the State to control its streets and sidewalks, but the insulation from attack of *ex parte* orders and legislation upon which

they are based even when patently impermissible prior restraints on the exercise of First Amendment rights, thus arming the state courts with the power to punish as a "contempt" what they otherwise could not punish at all. Constitutional restrictions against abridgments of First Amendment freedoms limit judicial equally with legislative and executive power. Convictions for contempt of court orders which invalidly abridge First Amendment freedoms must be condemned equally with convictions for violation of statutes which do the same thing. I respectfully dissent.



388 U.S. 350

UNITED STATES, Appellant,

v.

SEALY, INC.

No. 9.

Argued April 20, 1967.

Decided June 12, 1967.

Antitrust action against licensor of mattresses and bedding products. The United States District Court for the Northern District of Illinois enjoined licensor from engaging in conspiracy with licensees to fix minimum retail prices and the United States appealed under the Expediting Act and probable jurisdiction was noted. The Supreme Court, Mr. Justice Fortas, held that where the territorial limitations inherent in plan whereby licensor, controlled by its licensees which owned substantially all of the licensor's stock, granted mutually exclusive territories for the manufacture and sale of mattresses and bedding products under licensor's name and trademarks, were a part of the aggregation of trade restraints inherent in plan including unlawful price fixing and polic-

Civil No. B 069450

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION _____

CHURCH OF SCIENTOLOGY INTERNATIONAL,)

Plaintiff and Respondent,)

vs.)

GERALD ARMSTRONG,)

Defendant and Appellant.)

[Los Angeles Superior
Court No. BC 052395]

APPLICATION FOR EXTENSION OF TIME
IN WHICH TO FILE APPELLANT'S OPENING BRIEF;
DECLARATION OF FORD GREENE; ORDER

Ford Greene
State Bar No. 107601
HUB LAW OFFICES
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949
Telephone: (415) 258-0360Attorney for Appellant
GERALD ARMSTRONG

Civil No. B 069450

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
 SECOND APPELLATE DISTRICT, DIVISION _____

CHURCH OF SCIENTOLOGY INTERNATIONAL,)

Plaintiff and Respondent,)

vs.)

GERALD ARMSTRONG,)

Defendant and Appellant.)

[Los Angeles Superior
 Court No. BC 052395]

APPLICATION FOR EXTENSION OF TIME
 IN WHICH TO FILE APPELLANT'S OPENING BRIEF

Defendant and appellant GERALD ARMSTRONG requests an extension for 30 days of the time in which to file Appellant's Opening Brief to and including December 18, 1992. This application is based upon the Declaration of Ford Greene, attached hereto.

DATED: November 12, 1992

HUB LAW OFFICES

By: 

FORD GREENE

Attorney for Defendant and
 Appellant
 GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

APPLICATION FOR EXTENSION OF TIME
IN WHICH TO FILE APPELLANT'S OPENING BRIEF;
DECLARATION OF FORD GREENE; ORDER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

COUNTY CLERK
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, California

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 12, 1992

DECLARATION OF FORD GREENE

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for GERALD ARMSTRONG, appellant herein.

2. Pursuant to this Court's notice dated October 19, 1992, Appellant's Opening Brief must be served and filed on or before November 19, 1992. No previous extensions of time have been requested or granted.

3. I am a sole practitioner with a single person who acts as support staff.

4. The Appendix pursuant to CRC 5.1 required herein consists of hundreds of pages which were not susceptible of precise identification until the Reporter's Transcript was filed herein because I could not reconstruct from my notes all of the evidence that was admitted and excluded by the trial court during the hearing on respondent's motion for preliminary injunction the grant of which is the subject of this appeal. Additional time is needed to scrutinize the record in order to prepare an effective brief.

5. Additionally, in the action below, plaintiff/respondent CHURCH OF SCIENTOLOGY INTERNATIONAL has noticed a demurrer to ARMSTRONG's First Amended Answer and noticed a motion to strike his Cross-Complaint in such a manner that oppositions to both must be filed in the superior court on or before November 19, 1992. This conflicts with my ability to prepare an effective

Opening Brief.

6. The issues on appeal are numerous and complex. In part, said issues include, but are not limited to the following:

a. Whether it is a violation of public policy for Scientology to obstruct justice by suppressing evidence of its criminal and civil wrongdoing through the mechanism of employing settlement agreements, such as that which is the basis for the injunction below, to silence and intimidate witnesses;

b. Whether the settlement agreement at issue was a collusive attempt to engineer the reversal of an adverse superior court opinion in Church of Scientology of California v. Armstrong, Los Angeles Superior Court Action No. C 420153, affirmed on appeal, Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060;

c. Whether the injunction below is in restraint of trade inasmuch as it prohibits Armstrong from working for anti-Scientology attorneys in perpetuity;

d. Whether the injunction below violates appellant's right to employment, to assembly, to free speech and association;

e. Whether the injunction below is incapable of enforcement;

f. Whether the injunction below is unconstitutionally vague and broad;

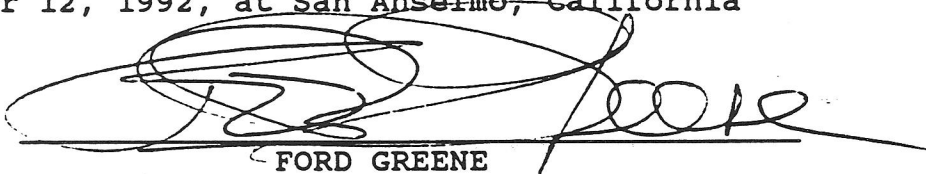
7. In consequence of the foregoing, I will not be able to complete our Appellant's Opening Brief in this case by November 18, 1992 without impairing the quality of the brief.

For this reason, I request a thirty day extension of time through and including December 18, 1992.

This extension of time in which to file Appellant's Opening Brief is sought in good faith and for the reasons set forth above and not for the purpose of delay.

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on November 12, 1992, at San Anselmo, California



FORD GREENE

ORDER

IT IS HEREBY ORDERED that defendant and appellant GERALD ARMSTRONG shall have an extension of the time in which to file his Appellant's Opening Brief to and including December 18, 1992.

DATED: November ___, 1992

Presiding Justice

1087

Civil No. B 069450

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,	)	
	)	
Plaintiff and Respondent,	)	[Los Angeles Superior
	)	Court No. BC 052395]
vs.	)	
	)	
GERALD ARMSTRONG,	)	
	)	
Defendant and Appellant.	)	
	)	
	)	
	)	

APPLICATION FOR EXTENSION OF TIME
IN WHICH TO FILE APPELLANT'S OPENING BRIEF 50 PAGES IN LENGTH;
DECLARATION OF FORD GREENE; ORDER

Ford Greene
State Bar No. 107601
HUB LAW OFFICES
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949
Telephone: (415) 258-0360Attorney for Appellant
GERALD ARMSTRONG**COPY**

Civil No. B 069450

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,)

Plaintiff and Respondent,)

vs.)

GERALD ARMSTRONG,)

Defendant and Appellant.)

[Los Angeles Superior
Court No. BC 052395]

APPLICATION FOR EXTENSION OF TIME
IN WHICH TO FILE APPELLANT'S OPENING BRIEF
NOT IN EXCESS OF 50 PAGES; DECLARATION OF
FORD GREENE; ORDER

Defendant and appellant GERALD ARMSTRONG requests an extension for 10 days of the time in which to file Appellant's Opening Brief to and including January 18, 1993 This application is based upon the Declaration of Ford Greene, attached hereto.

DATED: January 12, 1993

HUB LAW OFFICES

By: 

FORD GREENE

Attorney for Defendant and
Appellant

GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

APPLICATION FOR EXTENSION OF TIME
IN WHICH TO FILE APPELLANT'S OPENING BRIEF NOT IN EXCESS OF 50
PAGES; DECLARATION OF FORD GREENE; ORDER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

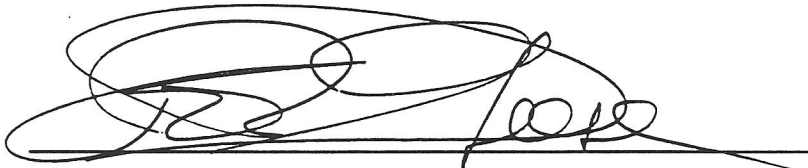
LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

COUNTY CLERK
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, California

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: January 12, 1993



DECLARATION OF FORD GREENE

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for GERALD ARMSTRONG, appellant herein.

2. On Friday, January 8, 1993, I timely filed appellant's 91-page opening brief pursuant to California Rules of Court, Rule 40 (n). On Monday, January 11, 1993, this Court considered and summarily denied Appellant's Application to File an Opening Brief in Excess of Fifty Pages which was submitted to it concurrently with the Opening Brief.

3. Appellant has raised meritorious issues on appeal. In order that his appeal be heard and considered by this Court, appellant requests that he be allowed an opportunity to reduce the size of his brief to the maximum allowable page-limit of 50 pages.

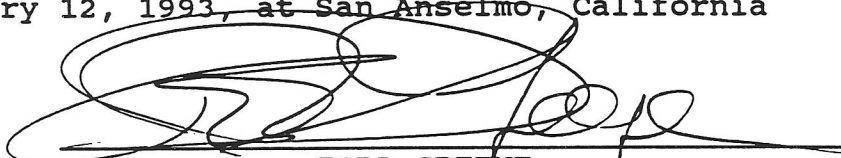
4. For the purpose of having an opportunity to trim his brief to within the limits set forth in California Rule of Court 15 (e), appellant requests an extension of 10 days which would start to run from January 8, 1993, the date that the oversized brief was filed.

5. One previous extension of time of 30 days was granted to appellant.

6. This extension of time in which to file Appellant's Opening Brief is sought in good faith and for the reasons set forth above and not for the purpose of delay.

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on January 12, 1993, at San Anselmo, California



FORD GREENE

ORDER

IT IS HEREBY ORDERED that defendant and appellant GERALD ARMSTRONG shall have an extension of the time in which to file his Appellant's Opening Brief, not to exceed 50 pages in length, to and including January 18, 1993.

DATED: January ____, 1993

Presiding Justice

1095

FILED

MAR 24 1992

HOWARD HANSON
MARIN COUNTY CLERK
By A. Cooper, Deputy

1 Andrew H. Wilson
2 WILSON, RYAN & CAMPILONGO
3 235 Montgomery Street
4 Suite 450
5 San Francisco, California 94104
6 (415) 391-3900

7 Laurie J. Bartilson
8 BOWLES & MOXON
9 6255 Sunset Boulevard
10 Suite 2000
11 Hollywood, California 90028
12 (213) 661-4030

13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF MARIN

17 CHURCH OF SCIENTOLOGY)
18 INTERNATIONAL, a California)
19 not-for-profit religious)
20 corporation;)

Case No. 152229

21 Plaintiff,

ORDER RE DEFENDANT'S
MOTION TO DISMISS OR STAY
OR TRANSFER TO LOS ANGELES
SUPERIOR COURT

22 vs.

23 GERALD ARMSTRONG; DOES 1
24 through 25, inclusive,

25 Defendants.

26 Defendant's motion for a change of venue was heard on March 20,
27 1992 at 9:00 a.m. in the above-entitled Court. Plaintiff was
28 represented by Wilson, Ryan and Campilongo, Andrew H. Wilson
appearing, and by Bowles and Moxon, Laurie J. Bartilson appearing.
Defendant was represented by Ford Greene.

Whereas, the Honorable Bruce R. Geernaert of the Los Angeles
Superior Court, having replaced Paul G. Breckenridge, Jr., in Church
of Scientology of California v. Gerald Armstrong, Los Angeles
Superior Court Case No. C 420 153, narrowly ruled on December 23,

235 Montgomery Street, Suite 450
San Francisco, California 94104

C002.003

1096

1 1991 that pursuant to Code of Civil Procedure sections 127(a)(4) and
2 664.4 he did not have jurisdiction to enforce the Mutual Release of
3 All Claims and Settlement Agreement executed December 6, 1986; and

4 Whereas, Paragraph 20 of said Agreement is nevertheless
5 effective as a forum selection clause which this court may enforce
6 under Smith v. Superior Court (1986); and

7 Having reviewed the written arguments and evidence submitted by
8 the parties, and having heard the arguments of counsel,

9 It is therefore ORDERED as follows:

10 1. Defendant's motion to transfer the file in Marin County
11 Superior Court Case No. 152229 is GRANTED.

12 a. It is FURTHER ORDERED that the file herein shall be
13 transferred to James H. Dempsey, Executive Officer and Clerk of the
14 superior court of Los Angeles, 111 North Spring Street, Los Angeles,
15 California, 90012 immediately after the expiration of twenty (20)
16 days of the date of this Order as required by Code of Civil
17 Procedure sections 399 and 400, the parties hereto waiving the
18 written notice required by Code of Civil Procedure Section 400.

19 b. It is FURTHER ORDERED that pursuant to Code of Civil
20 Procedure section 399 Plaintiff shall pay the costs of transfer of
21 the file to Los Angeles Superior Court.

22 c. It is FURTHER ORDERED that this Court shall retain
23 jurisdiction to determine, upon noticed motion, whether Defendant
24 should be awarded fees and costs in connection with the bringing of
25 the Motion to Transfer and to enforce, if necessary, Paragraphs 2.b.
26 through f. until the earlier of May 4, 1992 or the date a
27 preliminary injunction motion is appealed or denied in the Los
28 Angeles Superior Court.

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2. This Court's order of March 5, 1992 is hereby extended^{20.}
through and including the earlier of May 4, 1992^{or further order of the court.}
~~preliminary injunction is granted or denied by the Los Angeles~~
~~Superior Court.~~ Defendant Gerald Armstrong and his agents are
hereby enjoined from violation of that certain Settlement Agreement
("Agreement") dated December 6, 1986, including the following:

a. Armstrong is restrained from violating Paragraph 7(d)
which prohibits Armstrong from creating or publishing books or
magazine articles, disclosing his experiences with Scientology, and
any knowledge or information he may have concerning the Church of
Scientology, L. Ron Hubbard, or any of the organizations listed in
Paragraph 1 of the Agreement ("Scientology organizations")
affiliated therewith, disclosing documents identified in Exhibit A
to the Settlement Agreement, including films, tapes, photographs,
recordings or variations or copies of any such materials which
concern or relate to the religion of Scientology, L. Ron Hubbard or
any of the Scientology organizations;

b. Defendant is restrained from violating the provisions
of Paragraph 7(g) which prohibits Defendant from voluntarily
assisting or cooperating with any person adverse to Scientology in
any proceeding against any of the Scientology organizations, or from
cooperating in any manner with any organizations aligned against
Scientology;

c. Defendant is restrained from violating the provisions
of Paragraph 7(h) which prohibits Defendant from testifying or
participating in judicial or administrative proceedings adverse to
Scientology or any of the Scientology organizations unless compelled
to do so by subpoena or lawful process;

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d. Defendant is restrained from violating the provisions of Paragraph 10, which prohibits Defendant from assisting or advising anyone, including individuals, partnerships, associations, corporations, or governmental entities contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any of the Scientology organizations;

e. Defendant is restrained from violating the provisions of Paragraph 18(d), which prohibits Defendant from disclosing the contents of the Agreement;

f. Nothing in this Order shall be construed to prohibit Armstrong from working in the employ of, or as an independent contractor for, Ford Greene on matters not involving the Church of Scientology International or any of the Scientology organizations.

DATED 3/24, 1992. MICHAEL B. DUFFICY
JUDGE OF THE SUPERIOR COURT

Approved as to form:

Ford Greene, Esq.
Attorney for Defendant Gerald
Armstrong

PAUL MORANTZ
A Professional Corporation
P.O. Box 511
Pacific Palisades, California 90272
(310) 459-4745

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
(415) 258-0360

Attorneys for DEFENDANT GERALD ARMSTRONG

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY	)	CASE NO. BC 052 395
INTERNATIONAL, a California	)	(Marin County Sup. Ct.
not-for-profit religious	)	Case No. 152 229
corporation;	)	

Plaintiffs,

vs.

NOTICE OF RULING

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

Motion Cut Off: Not Set
Discovery Cut off: Not Set
Trial Date: None

PLEASE TAKE NOTICE THAT Defendant Gerald Armstrong's
Demurrer and Motion to Strike came before the court in Department
30 on July 2, 1992, and the court ruled as follows:

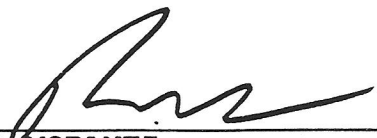
1. Demurrer is overruled. The court did not make any
decision on public policy, reasonableness, or adequate

1 consideration at this time.

2 2. Court finds Plaintiff appears to delight in
3 inflammatory, irrelevant, and improper language and grants,
4 striking paragraph 12, pp. 4-6, ln. 13; and paragraph 3, page 3,
5 lines 8-10. Denied as to remaining request to strike.

6 3. Plaintiff is to answer in twenty days.

7 Date: July 10, 1992

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10 
11 PAUL MORANTZ
12 FORD GREENE
13 Attorney for Defendant
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PROOF OF SERVICE BY MAIL

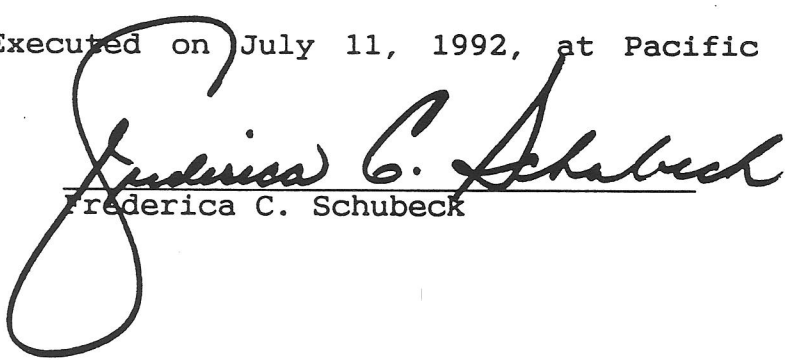
I am a resident of Los Angeles County, am over the age of eighteen, and not a party to the herein action. My business address is P.O. Box 511, Pacific Palisades, California 90272.

On July 11, 1992, I served the within Notice of Ruling on the parties by placing a copy of the same in a sealed envelope with postage thereon and placed the same in the United States mail at Pacific Palisades address as follows:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, CA 94104

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
Hollywood, CA 90028

I declare that the above is true under the penalty of perjury. Executed on July 11, 1992, at Pacific Palisades, California.


Frederica C. Schubeck

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY, ETC.,)

PLAINTIFFS,)

VS.)

NO. BC 052395

GERALD ARMSTRONG, ET AL.,)

DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, APRIL 28, 1992

FOR THE PLAINTIFF:

WILSON, RYAN & CAMPILONGO

BY: ANDREW WILSON

235 MONTGOMERY STREET - SUITE 850

SAN FRANCISCO, CALIFORNIA

TELEPHONE: (415) 391-3900

AND

BOWLES & MOXON

BY: LAURIE J. BARTILSON

6255 SUNSET BOULEVARD - SUITE 2000

HOLLYWOOD, CALIFORNIA 90028

TELEPHONE: (213) 661-4030

(APPEARANCES CONTINUED ON
FOLLOWING PAGE.)

COPY

MAUREEN GERWIG, CSR NO. 1877
OFFICIAL REPORTER

1 APPEARANCES: (CONTINUED)

2
3
4 FOR THE DEFENDANT:

HUB LAW OFFICES
BY: FORD GREENE
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960
TELEPHONE: (415) 258-0360

7 AND

8 PAUL MORANTZ
9 ATTORNEY AT LAW
10 P.O. BOX 511
11 PACIFIC PALISADES, CALIFORNIA 90272
12 TELEPHONE: 459-4745

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FOR AMICUS CURIAE:

LEWIS, D'AMATO, BRISBOIS & BISGAARD
BY: GRAHAM E. BERRY
221 NORTH FIGUEROA STREET
SUITE 1200
LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 250-1800

LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 28, 1992; A.M. SESSION
DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE
(MAUREEN GERWIG, OFFICIAL REPORTER)

-000-

THE COURT: THE MATTER OF CHURCH OF SCIENTOLOGY
VERSUS GERALD ARMSTRONG, BC 052395.

YOUR APPEARANCES, PLEASE.

MR. WILSON: ANDREW WILSON APPEARING ON BEHALF OF
PLAINTIFF, CHURCH OF SCIENTOLOGY INTERNATIONAL.

MS. BARTILSON: LAURIE BARTILSON ALSO HERE FOR PLAINTIFF.

MR. GREENE: FORD GREENE ON BEHALF OF DEFENDANT
GERALD ARMSTRONG.

MR. MORANTZ: PAUL MORANTZ ALSO FOR DEFENDANT GERALD
ARMSTRONG.

MR. BERRY: GRAHAM BERRY ON BEHALF OF JOSEPH E. YANNY
WHO IS NOW AN AMICUS CURIAE IN THE CASE.

JUDGE DUFFICY GRANTED LEAVE TO FILE AN AMICUS
CURIAE BRIEF, AND THERE IS ALSO A MOTION.

MR. WILSON: JUDGE DUFFICY GRANTED A MOTION FOR
MR. BERRY TO APPEAR AS AMICUS CURIAE WITH RESPECT TO THE --
THAT DOES NOT MEAN MR. BERRY IS ALLOWED TO APPEAR WITH
RESPECT TO THE CHALLENGE WE JUST FILED.

THE COURT: WE WILL GET TO THAT. I DON'T KNOW
THAT THAT'S GOING TO BE MEANINGFUL.

IT'S NECESSARY TO STATE THE BACKGROUND HERE TO
DETERMINE THE PROPRIETY OF THE PEREMPTORY CHALLENGE THAT
WAS FILED THIS MORNING IN DEPARTMENT 56.

1 SUPERVISED AGREEMENT UNDER 664.6. SO THIS CASE IS WHAT YOU
2 MIGHT CALL A RUN-OF-THE-MILL BREACH OF CONTRACT CASE AND,
3 THEREFORE, I DON'T THINK THERE IS MUCH TO THIS ARGUMENT
4 THAT IT IS THE SAME CASE OR CONTROVERSY THAT I DECIDED AND
5 MAYBE ON THAT BASIS ALONE -- NOW, IT MAY BE RELATED, AND
6 MAYBE DEPARTMENT 1 HAS SENT IT HERE BECAUSE THEY HAVE
7 DETERMINED THAT IT'S RELATED. AND I GUESS WE SHOULD SORT
8 OF SUSPECT THAT, BECAUSE IT SHOWS 56 OUT OF ALL THE
9 DEPARTMENTS IN THE BUILDING.

10 THERE IS ONE OTHER POSSIBLE REASON. I AM THE
11 ONLY I.C. JUDGE THAT IS NOW HEARING WRITS AND RECEIVERS
12 MATTERS.

13 MR. MORANTZ: JUDGE O'BRIEN MADE THE COMMENT ON THE
14 BENCH. HE SAID, I UNDERSTAND ONE OF THE PARTIES HAS MADE A
15 MOTION TO SEND THIS CASE TO JUDGE GEERNAERT.

16 I THINK HE WAS AWARE --

17 THE COURT: IN ALL LIKELIHOOD THAT'S WHY IT'S HERE
18 BECAUSE IT'S DEEMED TO BE RELATED.

19 THEN YOU GET TO THE POINT I DON'T THINK THERE
20 IS ANY CASE COVERING THE SCENARIO.

21 I HAVE NOT MADE ANY RULING OR DECISION BASED
22 ON A BREACH OF CONTRACT CASE.

23 ALL I DECIDED WAS THE LAW APPLYING TO THE
24 CONTROVERSY AS TO WHETHER OR NOT IT COULD BE ENFORCED UNDER
25 664.6 OR THAT OTHER CODE SECTION, AND BOTH OF THOSE WERE
26 PREMISED ON THEIR BEING A PRIOR COURT ORDER.

27 MR. MORANTZ: YOU DID MAKE STATEMENTS IN THE TRANSCRIPT
28 WHETHER OR NOT THE CONTRACT WOULD BE ENFORCIBLE.

1 THE COURT: I MAY HAVE MADE COMMENTS ABOUT IT BUT
2 THERE IS A LOT OF LAW HOW UNCERTAIN A CONTRACT HAS TO BE
3 BEFORE YOU CAN SUE FOR BREACH OF CONTRACT. AND THERE IS EVEN
4 A DISTINCTION BETWEEN HOW SPECIFIC IT NEEDS TO BE FOR
5 SPECIFIC.

6 MR. MORANTZ: WE WOULD LIKE THE OPPORTUNITY TO BE
7 ABLE TO BRIEF.

8 YOU MADE STATEMENTS AND FINDINGS THAT DO EFFECT
9 THE CONTRACT ISSUE.

10 THE COURT: I DON'T SEE THERE IS A VALID REASON TO
11 BRIEF THIS. IT'S A DIFFERENT CASE. IT'S NOT THE CASE
12 I HAD.

13 THERE IS NO REASON FOR ME NOT TO RECOGNIZE
14 THIS PEREMPTORY CHALLENGE.

15 MR. MORANTZ: WE ARE TRYING TO GET AN OPPORTUNITY
16 TO RESEARCH IT AND TO BE ABLE TO BRIEF IT.

17 YOU MAY HAVE MADE RULINGS RELATING TO A 66.4.
18 YOU MADE FACTUAL FINDINGS THAT WOULD ALSO AFFECT A BREACH
19 OF CONTRACT SUIT.

20 THE COURT: I CERTAINLY DIDN'T INTEND ANY OF MY
21 ANALYSIS TO BE A FACTUAL FINDING.

22 ACTUALLY IT WOULD BE A JURY TRIAL ENTITLEMENT,
23 SO I AM GOING TO --

24 MR. MORANTZ: WE ALSO HAVE THE ISSUE OF TIMELINESS.
25 IT WASN'T FILED IN DEPARTMENT 1 OR 85.

26 THE COURT: THIS IS SUCH AN UNUSUAL METHOD FOR AN
27 ASSIGNMENT TO COME FROM DEPARTMENT 1 THAT HAD YOU BEEN
28 SITTING THERE IN 1 AND HE SAID GO TO 56 I THINK YOU PROBABLY

1 HAD TO FILE IT THERE IN 1.

2 BUT IN VIEW OF THE WAY THIS HAPPENS I THINK
3 THAT'S READING IT PRETTY TECHNICALLY. SO I AM GOING TO
4 RECOGNIZE THE CHALLENGE AND OVERRULE THE OBJECTIONS.

5 SO HERE IS THE MINUTE ORDER. AFTER CONSIDERING
6 ARGUMENTS OF COUNSEL IN SUPPORT AND IN OPPOSITION TO THE
7 PEREMPTORY CHALLENGE FILED THIS DATE THE COURT RECOGNIZES
8 THE CHALLENGE AS TIMELY AND VALID, AND THE MATTER IS
9 TRANSFERRED TO DEPARTMENT -- I AM GOING TO CALL DEPARTMENT 1
10 AND ASK HIM WHETHER HE WANTS ME TO SEND IT BACK TO 85.

11 JUDGE MALLANO HAS ORDERED IT TO DEPARTMENT 86.

12 (PROCEEDINGS CONCLUDED.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY, ETC.,

PLAINTIFFS,

VS.

GERALD ARMSTRONG, ET AL.,

DEFENDANTS.

NO. BC 052395

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SS.

I, MAUREEN GERWIG, CSR NO. 1877, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 23, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON TUESDAY, APRIL 28, 1992.

DATED THIS 9TH DAY OF MAY, 1992.

Maureen Gerwig CSR #1877
OFFICIAL REPORTER

act procompetitively after the acquisition is consummated. Finally, the FTC showed that the equities favor issuing this injunction. Therefore, we VACATE the district court's order denying the FTC's request for a preliminary injunction and REMAND the case, directing the district court to issue the preliminary injunction.

IT IS SO ORDERED.



Margery WAKEFIELD, Plaintiff,

v.

The CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant-Appellee,

Times Publishing Company and Tribune Company, Appellants.

No. 89-3796.

**United States Court of Appeals,
Eleventh Circuit.**

Aug. 12, 1991.

Religious organization sought orders to show cause why plaintiff, which had brought suit against organization, should not be held in civil and criminal contempt for violating confidentiality requirement of settlement agreement. Newspapers' motions for access to contempt hearings and related pleadings, proceedings, and records, to determine if their reporters' qualified privilege prevented them from being compelled to testify, was denied by the United States District Court for the Middle District of Florida, No. 82-1313-CIV-T-10, Elizabeth A. Kovachevich, J., and newspapers appealed. The Court of Appeals, Hatchett, Circuit Judge, held that newspapers' appeal from order denying them access to contempt hearings did not fall within capable of repetition, yet evading review exception to mootness doctrine.

Case dismissed.

1. Federal Courts ⇐724

Newspapers' appeal from order denying newspapers' motions for access to evidentiary hearing at which hearing newspaper reporters had been subpoenaed did not satisfy requirements for capable of repetition, yet evading review exception to mootness doctrine after hearing was held; and newspaper which had reported on case did not seek to intervene until two years after closure, and case involved unique circumstances, such as plaintiff's "constant disregard and misuse of the judicial process," on which closure order was based. U.S. C.A. Const.Amend. 1.

2. Federal Courts ⇐614

Parties may make alternative claims, change claims, or sometimes file inconsistent claims, but may not do so in appellate court; Court of Appeals reviews case tried in district court and does not try ever-changing theories parties fashion during appellate process.

3. Federal Courts ⇐723

When addressing mootness, Court of Appeals determines whether judicial activity remains necessary.

4. Federal Courts ⇐723

Three exceptions to mootness doctrine exist: issues are capable of repetition yet evading review; appellant has taken all steps necessary to perfect appeal and to preserve status quo; and trial court's order will have possible collateral legal consequences.

5. Federal Courts ⇐723

Capable of repetition, yet evading review exception to mootness doctrine applies if challenged action is of too short a duration to be fully litigated prior to its cessation, and reasonable expectation exists that same complaining party will be subject to same action again.

6. Federal Courts ⇐723

Mere hypothesis or theoretical possibility is insufficient to satisfy test for capable of repetition, yet evading review exception to mootness doctrine.

WAKEFIELD v. CHURCH OF SCIENTOLOGY OF CALIFORNIA 1227

Cite as 938 F.2d 1226 (11th Cir. 1991)

Patricia F. Anderson, St. Petersburg, Fla., for appellants.

Michael Lee Hertzberg, New York City, for defendant-appellee.

Appeal from the United States District Court for the Middle District of Florida.

Before HATCHETT and COX Circuit Judges, and HENDERSON, Senior Circuit Judge.

HATCHETT, Circuit Judge:

We dismiss this case, which at one time touched upon important first amendment issues, because the case has been rendered moot.

FACTS

Margery Wakefield and three other plaintiffs alleged that the Church of Scientology of California (the Church) committed various wrongful acts against them. On August 14, 1986, Wakefield, the other plaintiffs, and the Church entered into a settlement agreement which included provisions enjoining Wakefield and the other plaintiffs from discussing, with other than immediate family members, (1) the substance of their complaints against the Church, (2) the substance of their claims against the Church, (3) alleged wrongs the Church committed, and (4) the contents of documents returned to the Church. The district court approved the settlement agreement, sealed the court files, and dismissed the case with prejudice. The dismissal order specifically gave the court jurisdiction to enforce the settlement terms. Nonetheless, Wakefield publicly violated the settlement agreement's confidentiality provisions.

In 1987, both the Church and Wakefield filed motions to enforce the settlement agreement. The district court requested that a magistrate judge address whether either party had violated the settlement agreement. On September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied

with the agreement's terms and conditions. On November 3, 1988, the Times Publishing Company (the Times), which publishes the *St. Petersburg Times*, moved to intervene in this lawsuit, to unseal the court files, and to gain access to any contempt hearings. In its motions, the Times alleged that the sealed court records and closed proceedings violated its and the public's constitutional and common law rights of access to judicial proceedings and records. In opposing the motions, the Church argued that they were untimely and barred by laches. On May 16, 1989, the district court adopted the magistrate judge's report, issued a preliminary and permanent injunction against Wakefield, and referred the Times's motion to intervene to the magistrate judge.

Notwithstanding the court's injunction, Wakefield continued to publicize the lawsuit. Thus, on July 18, 1989, the Church sought orders to show cause why Wakefield should not be held in civil and criminal contempt. The Church also sought damages, costs, and attorney's fees. To support its requests, the Church submitted excerpts of newspaper, television, and radio interviews attributed to Wakefield.

On August 15, 1989, the magistrate judge submitted a report and recommendation addressing Times's motion to intervene. He recommended that absent a compelling reason, all future proceedings and the court files, except for documents pertaining to the settlement, should be open and that Times be allowed to intervene. Due to events discussed later in this opinion, the district court has not issued a final order on these issues.

The district court scheduled an evidentiary hearing to address the Church's contempt motion. As witnesses at the hearing, the Church subpoenaed reporters for the *St. Petersburg Times* and the *Tampa Tribune*. Consequently, the Times, and the Tribune Company, which publishes the *Tampa Tribune* (the newspapers), filed motions for access to hearings, pleadings, proceedings, and records related to the contempt hearings in order to determine if

their reporters' qualified privilege prevented them from being compelled to testify.

PROCEDURAL HISTORY

On September 11, 1989, the district court held an *in camera* proceeding to rule on the newspapers' motions. The district court denied the newspapers' motions for access to the hearings because the Church subpoenaed the reporters only to establish the source and accuracy of the statements attributed to Wakefield. The district court also held that the reporters waived any privilege by publicly attributing the statements to Wakefield.

In considering the newspapers' motions, the district court stated, "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective." It further held that "[p]ublicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases." Thus, the district court closed the contempt proceedings to the public and the press referring further proceedings to a United States Magistrate Judge. The magistrate judge began contempt hearings on September 11, 1989.

On September 18, 1989, the newspapers filed a Notice of Appeal, a Motion for Expedited Appeal, and a Motion for Stay Pending Appeal. On September 29, 1989, this court granted expedited appeal, but denied the newspapers' emergency motion for a stay of the contempt proceedings pending resolution of the expedited appeal.

On appeal, the newspapers argued that the closure violated their first amendment and common law rights of access to judicial proceedings. They contended that the public's right of access outweighs the rationale for keeping the settlement agreement confidential. The Church contended that Wakefield's "open and defiant contumacious conduct" mandated closure and that the newspapers did not enjoy an absolute constitutional or common law right of access to civil proceedings.

During our first oral argument, we learned that the newspapers had never requested the district court to allow access to the contempt hearing transcripts. Since the hearings had been completed before oral argument, we issued a November 17, 1989, order which temporarily remanded the case to the district court for the limited purpose of allowing the newspapers to seek access to the contempt hearing transcripts. The order further instructed the district court to rule on such a request "within a reasonable time."

On June 25, 1990, eight months after the last contempt hearing, the magistrate judge submitted a report and recommendation which concluded that Wakefield had willfully violated the court's injunction. He further held that while a civil contempt finding could be appropriate, he suggested the case be referred to the United States Attorney's office for prosecution on the criminal contempt charges. The district court has not issued a final order addressing whether Wakefield is in civil or criminal contempt.

Furthermore, almost a year after our temporary remand, the district court had not ruled on the newspapers' requests for access to the contempt hearing transcripts. Thus, the newspapers filed a motion requesting that this court clarify the "reasonable time" language in the November 17, 1989, order. In order to speed finalization of this matter, this court denied the clarification motion, but issued an order stating, "[a]fter December 3, 1990, this court will entertain a request for relief addressing the delay that has occurred since our remand to the district court provided that relief has been sought." After this clear signal for action, the district court issued a November 21, 1990, order unsealing the civil contempt proceeding transcripts, except for those portions which disclosed the settlement agreement terms.

On March 21, 1991, the newspapers filed a motion requesting a second oral argument, which the Church opposed. On April 18, 1991, we granted the newspapers' motions for a second oral argument, instructing the parties to address (1) whether the

case was moot, (2) whether a case or controversy remained, and (3) whether a reasonable possibility of settlement existed.

ISSUE

The sole issue we discuss is whether this case is moot.

CONTENTIONS

The newspapers argue that this case is not moot because the court can grant relief which will affect the parties by ordering release of all the judicial documents relating to the contempt hearing and the unreleased transcript pages.

The Church contends that this case is moot and does not present a case or controversy which this court may address. It emphasizes that the newspapers initially sought access to the proceedings to represent their reporters, then under subpoena. It argues that this aspect of the case is absolutely moot because the Church released the reporters from their subpoenas.

DISCUSSION

[1,2] This case, at its beginning, presented an interesting and important issue: under what circumstances may civil judicial proceedings be closed to the public and the press? Unfortunately, the newspapers did not prevail in their efforts to halt the proceedings; this court denied their motions to stay the proceedings pending the expedited appeal. The newspapers argue that we should address whether a constitutional right of access to civil proceedings exists. To do so, however, would constitute an advisory opinion. The hearing that is the subject of this case terminated almost two years ago. Although the newspapers have an interest in the constitutional question, perhaps for future cases, no

1. It is also noteworthy that the newspapers have changed their claims as the case has progressed. They first sought access on constitutional and common law grounds, then they sought access to protect their reporters from compelled testimony. Finally, with full knowledge that the hearings had been completed, the newspapers never sought the hearing transcripts until prompted to do so by this court. Now, with all but eleven pages of the hearing transcript, the

"live" case or controversy remains in this case. The hearings have been completed, and the newspapers have been given the hearing transcripts.¹

[3] When addressing mootness, we determine whether judicial activity remains necessary. *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 n. 10 (1975). "A case becomes moot, and therefore, nonjusticiable, as involving a case or controversy, 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *B & B Chemical Co. v. United States E.P.A.*, 806 F.2d 987, 989 (11th Cir.1986) (quoting *United States v. Geraghty*, 445 U.S. 388, 396, 100 S.Ct. 1202, 1208, 63 L.Ed.2d 479 (1980)).

[4] Three exceptions to the mootness doctrine exist: (1) the issues are capable of repetition, yet evading review; (2) an appellant has taken all steps necessary to perfect the appeal and to preserve the status quo; and (3) the trial court's order will have possible collateral legal consequences. *B & B Chemical Co.*, 806 F.2d at 990.

The newspapers argue that this case falls within the "capable of repetition yet evading review" mootness exception. They argue that a case is not moot if this court can grant relief that affects the interested parties. *Airline Pilots Association v. U.A.L. Corp.*, 897 F.2d 1394 (7th Cir.1990); *Wilson v. U.S. Department of Interior*, 799 F.2d 591 (9th Cir.1986). Thus, they assert that we should order the release of all the judicial documents related to the contempt hearing and the unreleased transcript pages. In their view, these documents are essential so that the public can understand what happened to Wakefield.

newspapers seek the eleven pages on constitutional and common law grounds. Many of the theories presented to this court were never presented to the district court. Parties may make alternative claims, may change claims, may sometimes file inconsistent claims, but parties may not do so in the appellate court. This court reviews the case tried in the district court; it does not try ever-changing theories parties fashion during the appellate process.

[5] The newspapers do not meet the exceptions' two conditions in order for the capable of repetition, yet evading review exception to apply: (1) the challenged action must be of too short a duration to be fully litigated prior to its cessation, and (2) a reasonable expectation must exist that the same complaining party will be subject to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975).

As an example of the action's short duration, the newspapers assert that they acted promptly by filing during the contempt proceeding's adjournment a motion for a stay pending the appeal of the district court's closure. The record refutes this assertion. The underlying case has been in the federal court system since November 29, 1982. Even prior to the 1986 closure, the Times reported on the Wakefield case, but not until 1988, did Times seek to intervene. Additionally, the newspapers did not appeal the closure order until the contempt hearing had been adjourned for a continuance. These facts refute the newspapers' assertions of the action's short duration.

Likewise, the newspapers cannot satisfy the second condition. In addressing the second condition, the newspapers argue that if this court does not offer judicial guidance, a "reasonable expectation" exists that this controversy will occur again. They specifically state that they "continue to expect and suspect that secret church proceedings are being or will be held," and suspect that the Church will bring contempt proceedings against the other plaintiffs. The record does not support these suspicions.

[6] This case involves unique circumstances which are not easily repeated. Wakefield's constant disregard and misuse of the judicial process mandated partial closure. Since Wakefield's contempt hearing concluded, the Church has not instituted nor has the district court conducted any

additional contempt hearings, show cause hearings, or *in camera* proceedings. Furthermore, nothing indicates that the Church contemplates these actions. Although the newspapers' suspicions that secret church and contempt proceedings will occur constitute a theoretical possibility, a mere hypothesis or theoretical possibility is insufficient to satisfy the test stated in *Weinstein*. *Morgan v. Roberts*, 702 F.2d 945, 947 (11th Cir.1983). Thus, no "reasonable expectation" exists that this controversy will occur again.²

The newspapers' interest in the important constitutional issue which was once alive in this case is understandable. Nevertheless, we must wait for another case with a current controversy, and with a well-developed record to address the issue. The fact that much of the delay in this case is attributable to a busy and overburdened federal district court is unfortunate.

Because the newspapers cannot satisfy the capable of repetition, yet evading review requirements, this case is moot. Accordingly, this case is dismissed.³

DISMISSED.



UNITED STATES of America,
Plaintiff-Appellee,

v.

Donna EPPERSON,
Defendant-Appellant.

No. 90-3344.

United States Court of Appeals,
Eleventh Circuit.

Aug. 14, 1991.

Rochelle Reback, Tampa, Fla., for defendant-appellant.

2. As earlier noted, the hearings were not halted because the newspapers did not prevail on their motions for stay pending appeal. We must assume that in the proper cases stays will be granted.

3. We express no opinion on whether the remaining eleven pages of the transcripts may properly be sought in another federal lawsuit.

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 89-3505
Non-Argument Calendar

District Court Docket No. 81-174-CIV-T-17

NANCY McLEAN, and
JOHN McLEAN, her son,

Plaintiffs-Appellants,

versus

THE CHURCH OF SCIENTOLOGY OF CALIFORNIA,
MARY SUE HUBBARD, L. RON HUBBARD,
JOSEPH PETER LISA, MILTON WOLFE and
MERREL VANNIER,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(September 17, 1991)

Before HOFER, Chief Judge, JOHNSON and EDMONDSON, Circuit Judges.

PER CURIAM:

Appellant McLean appeals the district court's order permanently enjoining her from disclosing any information about her lawsuit against

the Church of Scientology (Church) and the resulting Settlement Agreement entered into between McLean and the Church. We affirm.¹

1

McLean and her son sued the Church in 1981. In August 1986 McLean and the Church entered into a court-supervised Settlement Agreement requiring the Church to pay an undisclosed sum to McLean and requiring McLean to turn over to the Church any documents relating to the litigation and prohibiting McLean from, among other things, discussing with anyone, other than immediate family members, the circumstances surrounding the litigation or discussing any factual evidence that might have supported the litigation. In March 1988 the Church moved for a preliminary and a permanent injunction, claiming

¹ The outcome of this decision was delayed pending final resolution of the issues in Wakefield v. Church of Scientology, ___ F.2d ___ (11th Cir. 1991) (finding moot the motion filed by local newspapers seeking access to the Settlement Agreement entered into among the Church and various plaintiffs). Because the Wakefield decision has no impact on the merits of this case, we need discuss it no further.

that McLean was violating the terms of the Settlement Agreement and that she should be enjoined from further violations.²

The district court referred the matter to a magistrate judge. The magistrate judge admitted into evidence affidavits submitted by the Church, indicating that McLean had violated the terms of the settlement agreement. The magistrate judge also heard testimony from McLean, who was given a full opportunity to rebut the matters contained in the affidavit. After considering the matter, the magistrate judge issued a Report and Recommendation concluding that McLean violated the Agreement. The district court accepted the Report and Recommendation and entered against McLean a preliminary and a permanent injunction that enjoined her from further disclosing the substance of her complaint and claim against the Church, alleged wrongs committed by the Church and the substance of documents that were returned to the Church under the Settlement Agreement. This appeal followed.

² Because the record in this case is under seal, our outline of the underlying facts of this appeal will be cursory.

II

McLean claims that the permanent injunction against her further disclosures should be reversed because the district court failed to give her proper notice that it consolidated the preliminary- and permanent-injunction hearings. We disagree. Although "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits," University of Texas v. Camenisch, 101 S. Ct. 1830, 1834 (1981) (citations omitted), Rule 65(a)(2) of the Federal Rules of Civil Procedure allows consolidation of the preliminary-injunction hearing and the hearing on the merits of the permanent injunction. Fed. R. Civ. P. 65(a)(2). Before preliminary- and permanent-injunction hearings can be consolidated, though, parties must have notice of consolidation. Id.; Eli Lilly & Co. v. Generix Drug Sales, Inc., 460 F.2d 1096, 1106 (5th Cir. 1972).³ The district court's failure, however, to give notice "is not a sufficient basis for appellate reversal; [McLean] must

³ This court adopted as precedent all decisions of the former Fifth Circuit Court of Appeals decided prior to October 1, 1981. Bonner v. City of Pritchard, 661 F.2d 1206 (11th Cir. 1981).

also show that the procedures followed resulted in prejudice, i.e., that the lack of notice caused [McLean] to withhold certain proof which would show [her] entitlement to relief on the merits." Id.; cf. Garcia v. Smith, 680 F. 2d 1327, 1328 (11th Cir. 1982). After reviewing the record, we conclude that McLean has not been prejudiced.

At the preliminary-injunction hearing, McLean testified among other things that she had reacquired certain documents turned over to the Church and that she was using these documents to "counsel" Church members. She testified further that she had discussed certain aspects of her suit against the Church with persons who were not members of her immediate family. If we view this testimony in the light most favorable to McLean and if we assume that any evidence she might have presented at a later hearing on the merits would have fully corroborated her testimony, we would still find that she violated the terms of the Settlement Agreement. So, because McLean in effect conceded that she was violating the terms of the Settlement Agreement, we conclude that she was not prejudiced by being denied notice of the consolidation of her preliminary and permanent injunction hearings.

Construction. Nor has plaintiff shown that the mere fact that police and administrative investigations were conducted is evidence of an illegal search.

This complaint is groundless and summary judgment is granted as to this issue.

Since no federal question jurisdiction remains, the court declines to exercise independent jurisdiction over plaintiff's state law claims of defamation and invasion of privacy. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966).



Phyllis Wilson HOFFMAN, Plaintiff,
and

Equal Employment Opportunity Commission, Plaintiff-Intervenor,

UNITED TELECOMMUNICATIONS,
INC., et al., Defendants.

Civ. A. No. 76-223-C2.

United States District Court,
D. Kansas.

June 21, 1988.

Equal Employment Opportunity Commission brought motion to have court declare that employment discrimination settlement agreement between former employee and employer prohibiting employee or her attorney from any further participation in case brought by EEOC, except that employee could testify pursuant to subpoena, was unenforceable as against public policy. The District Court, Saffels, J., held that: (1) settlement was not unenforceable as against public policy; (2) claim that settlement was unenforceable for violating Title VII's antiretaliation provision was not ripe for adjudication; and (3) settlement did not violate rule prohibiting law-

yer from entering into agreement that restricts right to practice.

Motion denied.

1. Compromise and Settlement ¶9

Settlement of former employee's employment discrimination suit prohibiting employee or her legal counsel from any further participation in case brought by Equal Employment Opportunity Commission, except that employee could testify pursuant to subpoena, was not unenforceable as against public policy; employee apparently testified concerning everything she knew relevant to case and there were no allegations that she failed to cooperate fully at least until settlement was consummated, and employee's interest in recovering monetary compensation in private settlement of employment discrimination suit that had been pending 12 years outweighed any harm to public policy that encourages cooperation in investigation of subject employer. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

2. Federal Courts ¶13.10

Equal Employment Opportunity Commission's claim that employment discrimination settlement prohibiting employee or her legal counsel from any further participation in case brought by Commission, except that employee could testify pursuant to subpoena, was unenforceable on ground that it violated Title VII's antiretaliation provision was not ripe for adjudication; employer had done nothing in retaliation of any act by employee. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

3. Attorney and Client ¶32(7)

Portion of employment discrimination settlement agreement prohibiting former employee's attorney from further participation in case brought by Equal Employment Opportunity Commission did not violate Code of Professional Responsibility Disciplinary Rules prohibition against lawyer entering into agreement that restricts right to practice; counsel did not restrict any right to practice law since all potential

plaintiffs in lawsuit were represented by Equal Employment Opportunity Commission by Commission's own choice, and therefore there would be no opportunity for counsel to advocate interests of any other person. ABA Code of Prof. Resp., DR 2-108.

Edward M. Boddington, Jr., Boddington & Brown, Kansas City, Kan., Gerald S. Hartman, George M. MacDonald/Gregory W. Homer, Vedder, Price, Kaufman, Kammholz & Day, Washington, D.C., John J. Cassidy, Jr., James S. Petrie, Michael G. Cleveland, Vedder, Price, Kaufman & Kammholz, Chicago, Ill., for defendants.

Richard J. Croker/Megan Yearout, Westwood, Kan., for United Telecommunications, Inc.

James R. Neely, Jr., Reg. Atty., Gretchen D. Huston, Supervisory Trial Atty., Robert G. Johnson, Sr. Trial Atty., Thomas J. Borek, Leslie V. Freeman, Trial Atty., E.E.O.C., St. Louis Dist. Office, St. Louis, Mo., for Intervenor E.E.O.C.

MEMORANDUM AND ORDER

SAFFELS, District Judge.

The original plaintiff in this employment discrimination case, which happens to be the oldest lawsuit on this judge's docket and in fact predates this judge's appointment in 1979, settled her claim against defendants in full in late 1987. On October 19, 1987, the court signed off on a stipulation of dismissal by plaintiff and all defendants. By agreement of the parties, the terms of this settlement were kept confidential. This notwithstanding, the EEOC has learned that one of the provisions of the settlement prohibited plaintiff or her legal counsel from any further participation in the case, except that plaintiff could testify pursuant to a subpoena. This part of the settlement was confirmed in a letter written by plaintiff's counsel to the EEOC. The EEOC has moved to declare the settlement agreement provision unenforceable as against public policy, among other grounds.

Plaintiff originally brought this lawsuit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, alleging discrimination against herself and a class of females. In 1984, the EEOC and plaintiff successfully petitioned the court to permit the EEOC to assume responsibility of litigating the class claims, thereby leaving plaintiff in the lawsuit solely to litigate her own individual claims of discrimination. Defendants represent that plaintiff has been deposed at great length on several occasions and has expressly testified concerning all known bases for her claims of discrimination. In addition, defendants contend that because plaintiff last worked for defendants prior to the filing of this lawsuit, she has no direct knowledge of defendants' policies or practices subsequent to 1975 and, again, has testified as to her complete knowledge of events before that date. These arguments by defendant are intended to counter the EEOC's allegation that plaintiff's refusal to voluntarily participate in further investigation will substantially hinder its pursuit of charges against defendants, and public policy should be invoked to render void this part of the settlement agreement.

The EEOC also argues that the provision barring contact with the investigation violates Title VII's prohibition against retaliation, because plaintiff is threatened with being held to have violated the settlement agreement if she voluntarily cooperates with the EEOC's prosecution of this case. Finally, the EEOC alleges that the portion of the settlement agreement prohibiting plaintiff's attorneys from further participation in the lawsuit violates the Code of Professional Responsibility, Disciplinary Rule 2-108: "In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law."

The EEOC has cited legal authority to the effect that a waiver of the right to file a charge of discrimination is void as against public policy. Specifically, "an employer and an employee cannot agree to deny to the EEOC the information it needs to advance [the] public interest [in preventing employment discrimination]." *EEOC*

v. Cosmair, Inc., L'Oreal Hair Care Div., 821 F.2d 1085, 1090 (5th Cir.1987). In the *Cosmair* case, the court noted the following:

Allowing the filing of charges to be obstructed by enforcing a waiver of the right to file a charge could impede EEOC enforcement of the civil rights laws. The EEOC depends on the filing of charges to notify it of possible discrimination.... A charge not only informs the EEOC of discrimination against the employee who filed the charge or on whose behalf it is filed; but also may identify other unlawful company actions.... When the EEOC acts on this information, "albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination."

Id. (citations omitted). It is clear that the *Cosmair* court intended to prevent agreements that restricted any attempt to keep victims of discrimination from making their claims public. To allow these claims to be kept secret by an agreement between the employer and employee would create the potential for a company to continue a pattern of discrimination and successfully avoid any penalty by buying out its victims. The Fifth Circuit's opinion does not stand for the proposition that a person in Phyllis Hoffman's situation cannot agree to voluntarily cease cooperation with the EEOC. In *Cosmair*, the policy against denying "information" to the EEOC meant that a victim of discrimination should not be discouraged to file a charge, with the charge being the "information" the EEOC is after. In the present case, a charge was filed and the EEOC has pursued it for over a decade. Plaintiff has apparently testified concerning everything she knows relevant to this case, and there is no allegation that she has failed to cooperate fully in the EEOC investigation, at least until the settlement was consummated. The public policy against denying the EEOC information concerning employment discrimination is simply not being violated in this instance.

[1] As the *Cosmair* court noted, a promise such as was made by plaintiff in

the settlement agreement is unenforceable if the interest in its enforcement is outweighed under the circumstances by a public policy harmed by enforcement of the agreement. *Id.* The court finds that plaintiff's interest in recovering monetary compensation in a private settlement of an employment discrimination lawsuit that has been pending twelve years outweighs, under the circumstances of this case, any harm to the public policy that encourages cooperation in an investigation of the subject employer. Not the least justification of this holding is plaintiff's availability to testify completely and truthfully upon being subpoenaed by the EEOC. See *EEOC v. United States Steel Corp.*, 671 F.Supp. 351, 358 (W.D.Pa.1987) (finding invalid a release of claims that completely prohibited a victim of discrimination from assisting in the prosecution of a claim).

[2] The court does not find the EEOC's remaining arguments persuasive. The issue of whether the settlement violates Title VII's anti-retaliation provision is not ripe, because defendants have done nothing in retaliation of any act by plaintiff. Moreover, in the *Cosmair* and *United States Steel* cases cited by the EEOC, agreements signed by potential victims of discrimination included forfeitures of certain employment benefits to which the employees were legally entitled, in the event the employees pursued a charge against the subject employer. In the present case, plaintiff is not legally entitled to have defendants pay an amount of money in settlement of her claims.

[3] Finally, the facts simply do not present the possibility of an ethical violation. In agreeing not to participate in this litigation, plaintiff's counsel is in no way restricting any right to practice law. All potential plaintiffs in this lawsuit are represented by the EEOC, by the EEOC's own choice. There will be no opportunity for plaintiff's counsel to advocate the interests of any other person. This argument is without merit.

As a final comment, the court certainly does not intend to encourage settlements

CHANDLER v. U.S.

Cite as 687 F.Supp. 1515 (D.Utah 1988)

such as the one in this case. Today's decision rests solely on the peculiar facts of this lawsuit, and even a slightly different factual situation could greatly affect the court's disposition on the merits. Simply put, under the circumstances of this case, a settlement agreement limiting the plaintiff's cooperation in culminating the twelve-year-old investigation is not void as against public policy.

IT IS BY THE COURT THEREFORE ORDERED that plaintiff-intervenor's motion to declare settlement agreement provisions unenforceable be denied.



Eric E. & Peggy K.
CHANDLER, Plaintiffs,

v.

UNITED STATES of America,
Defendant.

No. 86-C-1105S.

United States District Court,
D. Utah, C.D.

June 6, 1988.

Taxpayers sued Government for damages claiming that Internal Revenue Service had negligently made unlawful disclosure of taxpayers' return information. The District Court, Sam, J., held that: (1) prior in-court exposure of taxpayers' return information was not relevant in deciding whether subsequent IRS disclosure was unlawful, and (2) evidence supported finding that IRS was negligent in not locating taxpayers' account after receiving taxpayers' payment check supporting award of \$1,000 in damages for unlawful disclosure of return information.

Ordered accordingly.

1. Internal Revenue §4482

Taxpayers' filing of suit to enjoin IRS from collecting frivolous return penalty was not relevant to determining whether IRS had subsequently unlawfully disclosed return information to employer of one of taxpayers; notwithstanding prior in-court exposure of return information, propriety of disclosure would be judged strictly as to whether it fit within one of statutory grounds for disclosure. 26 U.S.C.A. § 6103.

2. Internal Revenue §4482

In order to recover statutory damages for unlawful disclosure of return information, taxpayers were only required to prove simple negligence, not that IRS acted with intent or wilfulness; wilful disclosure or disclosure that was result of gross negligence would give rise to punitive damage award. 26 U.S.C.A. § 7431(a)(1).

3. Internal Revenue §4482

IRS employees' failure to make reasonable effort to locate taxpayers' account, after receipt of taxpayers' check which did not contain TIN and failure to attempt notification of taxpayers to aid in locating account constituted negligence which supported award of \$1,000 in damages for one act of unauthorized disclosure of return information when IRS subsequently issued notice of levy to one taxpayer's employer. 26 U.S.C.A. § 7431(c)(1).

Eric E. Chandler and Peggy K. Chandler,
Centerville, Utah, pro se.

Brent D. Ward, U.S. Atty., Glen R. Dawson, Asst. U.S. Atty., Salt Lake City, Utah, Michael J. Salem, Trial Atty., Tax Div., U.S. Dept. of Justice, Washington, D.C., for defendant.

RULING

SAM, District Judge.

This action is before the court for final judgment following trial without jury. Plaintiffs Eric and Peggy Chandler, appearing *pro se*, sue for damages claiming the Internal Revenue Service (IRS) negligently made an unlawful disclosure of the

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On March 1, 1993, I served the foregoing document PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHALL NOT BE HELD IN CONTEMPT OF COURT on interested parties described as in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Ford Greene, Esq. BY MAIL AND FAX
 HUB LAW OFFICES
 711 Sir Francis Drake Blvd.
 San Anselmo, California 94960-1049

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 1, 1993, at Los Angeles, California.

- [] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at Los Angeles, California.

- [X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

- [] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On March 1, 1993, I served the foregoing document PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHALL NOT BE HELD IN CONTEMPT OF COURT on interested parties described as in this action,

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PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

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FILED

NOV 16 1994

HOWARD HANSON
 MARIN COUNTY CLERK
 DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY
 INTERNATIONAL, a California
 not-for-profit religious
 corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1
 through 25, inclusive,

Defendants.

No. BC 052395

**DEFENDANT ARMSTRONG'S
 MEMORANDUM IN OPPOSITION TO
 MOTION IN LIMINE RE ACTIONS
 OF SCIENTOLOGY**

Date: March 5, 1993

Time: 9:30 a.m.

Dept: 86

Trial Date: May 3, 1993

Discovery Cut Off: None Set

Motion Cut Off: None Set

ORIGINAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY	)	No. BC 052395
INTERNATIONAL, a California	)	
not-for-profit religious	)	DEFENDANT ARMSTRONG'S
corporation;	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION IN LIMINE RE ACTIONS
Plaintiffs,	)	<u>OF SCIENTOLOGY</u>
	)	
vs.	)	Date: March 5, 1993
	)	Time: 9:30 a.m.
GERALD ARMSTRONG; DOES 1	)	Dept: 86
through 25, inclusive,	)	
	)	Trial Date: May 3, 1993
Defendants.	)	Discovery Cut Off: None Set
	)	Motion Cut Off: None Set

I. INTRODUCTION

Motions in limine generally are proper to circumscribe evidence that would be presented to a jury so as to prevent the judgment of the jury from being skewed by exposure to information that is not admissible. Courts, however, are educated in the law, better equipped to make evidentiary rulings at the time of the presentation of the evidence, and not susceptible to the prejudice

1 which can contaminate the judgment of a jury. Since the instant
2 contempt proceeding is not before the jury, a motion in limine
3 would seem unnecessary. Armstrong, however, will respond to it as
4 follows.

5 One of Armstrong's strongest defenses to the OSC re Contempt is
6 that by its own terms the injunction is ambiguous and vague and
7 such ambiguity has been amplified by the positions asserted by
8 Scientology's counsel during the course of this litigation.

9 During the hearing on May 27, 1992 before Judge Sohigian
10 Scientology stated that Armstrong's performance of routine
11 clerical work not requiring the use of the knowledge he gained
12 while a member of Scientology would not constitute a violation of
13 the contract. Moreover, such position was stated again by counsel
14 during the course of Armstrong's deposition.

15 In the instant matter, Scientology has shifted its position
16 and now claims that the very same conduct does constitute
17 violations of the order.

18 Armstrong contends that Scientology's shifts in legal
19 posture, accusations of Armstrong's commission of conduct which by
20 no stretch of the imagination could constitute violations of the
21 injunction, and the bringing of the instant OSC are all examples
22 of the imposition of the Fair Game Policy and Scientology's
23 singularly oppressive use of litigation as a tool of Fair Game.
24 Therefore, evidence relevant to both Fair Game, Scientology's
25 litigation strategies and animus toward Gerald Armstrong and his
26 attorneys is relevant to his defenses in this case.

27 Furthermore, Armstrong's defense that the contract
28 constitutes a violation of public policy which was obtained by

1 fraud both require the presentation of evidence antedating May 28,
2 1992.

3 **II. ACTIONS OF PLAINTIFF WHICH TEND TO SHOW SCIENTOLOGY'S USE OF**
4 **THE INJUNCTION IS HARSH AND DISCRIMINATORY IS RELEVANT TO**
5 **ARMSTRONG'S CONSTITUTIONAL DEFENSE**

6 **A. The Order May Be Attacked For Ambiguity**

7 It is beyond cavil that a defense to a charge of contempt is
8 that the order is ambiguous. An order of contempt cannot stand if
9 the underlying order is invalid. In re Blaze (1969) 271
10 Cal.App.2d 210, 212, 76 CR 551; In re Misener (1985) 38 Cal.3d
11 543, 558, 213 CR 569.

12 To hold a person guilty of contempt for violating an
13 injunction, the acts constituting the contempt must be
14 clearly and specifically prohibited by the terms of the
15 injunction. [Citations.] The party bound by an injunction
16 must be able to determine from its terms what he may or may
17 not do; he cannot be held guilty of contempt for violating an
18 injunction that is uncertain or ambiguous (Ibid.), just as he
19 may not be held guilty of violating a criminal statute that
20 fails to give him adequate notice of the prohibited acts.
21 (Brunton v. Superior Court (1942) 20 Cal.2d 202, 205, 124
22 P.2d 831, 833.)

23 Sorenson v. Superior Court (1969) 169 Cal.App.2d 73, 78, 74 CR
24 597. Any ambiguity in the court order alleged to have been
25 violated must be resolved in favor of the accused. Ibid.; In re
26 Blaze, supra at 212; Gottlieb v. Superior Court (1959) 168
27 Cal.App.2d 309, 313, 335 P.2d 714, 717.

28 No one may be punished in contempt for the disobedience of a
void order. Kreling v. Superior Court (1941) 18 Cal.2d 884, 885,
118 P.2d 470. If the court acts in excess of its jurisdiction in
issuing the underlying order, there is no basis for the order of
contempt. Elysium, Inc. v. Superior Court (1968) 266 Cal.App.2d
763, 765, 72 CR 355. "[A] broad meaning is given to the term
'jurisdiction.'" Bd. of Med. Examiners v. Terminal-Hudson

1 Electronics (1977) 73 Cal.App.3d 376, 388, 140 CR 757.

2 In this state it is clearly the law that the violation of an
3 order in excess of the jurisdiction of the reviewing court
4 cannot produce a valid judgment of contempt [Citations] and
5 that the "jurisdiction" in question extends beyond mere
6 subject matter or personal jurisdiction to that concept
7 described by us in Abelleira v. District Court of Appeal
(1941) 17 Cal.2d 280, at page 291 ... "Speaking generally,
8 any acts which exceed the defined power of a court in any
9 instance, whether that power be defined by constitutional
10 provision, express statutory declaration, or rules developed
11 by the courts and followed under the doctrine of stare
12 decisis, are in excess of jurisdiction, ..."

13 In re Berry (1968) 68 Cal.2d 137, 147, 65 CR 273; California
14 Retail Liquor Dealers Institution v. United Farm Workers (1976) 57
15 Cal.App.3d 606, 610.

16 Therefore, "a person affected by an injunctive order which
17 exceeds the jurisdiction of the issuing court has the choice of
18 complying with the order and bringing a judicial challenge, or
19 disobeying it and subsequently attacking its validity when he is
20 charged with contempt." United Farm Workers v. Superior Court
(1975) 14 Cal.3d 902, 907, fn. 3, 122 CR 827.

21 Here it may be applied to a case where, though the court
22 has jurisdiction over the subject matter and the parties in
23 the fundamental sense, it has no 'jurisdiction' (or power) to
24 act except in a particular manner, or to give certain kinds
25 of relief, or to act without the occurrence of certain
26 procedural prerequisites." (Abelleira v. District Court of
Appeal (1941) 17 Cal.2d 280, 288, 109 P.2d 942, 947.)
27 Accordingly, "An injunction based upon an unconstitutional
28 ordinance exceeds the issuing court's jurisdiction
[Citation.]" (Welton v. City of Los Angeles (1976) 18 Cal.3d
497, 507, 134 CR 668 ...) and cannot provide a basis for
adjudging the respondent party (here Opti-Cal) in contempt.

24 Ibid. at fn. 9.

25 Likewise, an injunction based upon a contract which is void
26 as either being in restraint of trade or against public policy is
27 subject to collateral attack. Thus, if a court grants injunctive
28 relief, which under no circumstances it has any authority to grant

1 to that extent its judgment is void. Hunter v. Superior Court
 2 (1939) 36 Cal.App.2d 100, 97 P.2d 492.

3 **B. The Injunction Is Void For Vagueness Because It Does Not Put**
 4 **Armstrong On Fair Notice Of What Conduct Is Prohibited**

5 It is a basic principle of due process that an enactment
 6 is void for vagueness if its prohibitions are not
 7 clearly defined. Vague laws offend several important
 8 values. First, because we assume that man is free to
 9 steer between lawful and unlawful conduct, we insist
 10 that laws give the person of ordinary intelligence a
 11 reasonable opportunity to know what is prohibited, so
 12 that he may act accordingly. Vague laws may trap the
 13 innocent by not providing fair warning. Second, if
 14 arbitrary and discriminatory enforcement is to be
 15 prevented, laws must provide explicit standards for
 those who apply them. A vague law impermissibly
 delegates basic policy matters to policemen, judges, and
 juries for resolution on an ad hoc and subjective basis,
 with attendant dangers of arbitrary and discriminatory
 application. Third, but related, where a vague statute
 "abut[s] upon sensitive areas of basic First Amendment
 freedoms," it "operates to inhibit the exercise of
 [those] freedoms." Uncertain meanings inevitably lead
 citizens to "steer far wider of the unlawful zone . . .
 than if the boundaries of the forbidden areas were
 clearly marked.

16 Grayned v. City of Rockford (1972) 408 U.S. 104, 108-09.

17 Armstrong is enjoined from "directly or indirectly . . .
 18 voluntarily assisting" individuals intending to make or litigate a
 19 claim against Scientology regarding said claim, voluntarily
 20 assisting such persons arbitrating or litigating a claim against
 21 Scientology, but is not prohibited from "being reasonably
 22 available for the service of subpoenas on him", testifying
 23 truthfully, disclosing criminal conduct of Scientology to
 24 authorities, and "engaging in gainful employment rendering
 25 clerical or paralegal services not contrary to the terms and
 26 conditions of this order."

27 Gerald Armstrong works for Ford Greene. Greene litigates
 28 against Scientology. Does the mere fact of Armstrong's employment

1 by Greene constitute assistance within the terms of the
2 injunction? Is Armstrong in violation of the order when he works
3 on non-Scientology cases, because in so helping Greene carry his
4 case load he enables Greene to dedicate more time litigating
5 against Scientology? In other words by being a live, breathing
6 body in Greene's office providing assistance in non-Scientology
7 cases does Armstrong provide "indirect assistance" in Scientology
8 cases? Is Armstrong in violation of the injunction when he
9 answers the phone and somebody suing Scientology is on the other
10 end? If Armstrong orders office supplies some of which will be
11 used in anti-Scientology litigation, is he in violation? If
12 Armstrong handles outgoing Scientology-related mail? Opens an
13 envelope from Bowles and Moxon? Licks a stamp to be placed on a
14 letter to an anti-Scientology litigant? Goes to the post office?
15 Assembles exhibits to a brief opposing a Scientology motion?
16 Signs a proof of service when Mr. Greene is out of town?

17 How is Armstrong to ascertain what and who are "all
18 Scientology and Scientology affiliated organizations and entities
19 and their officers, agents, representatives, employees,
20 volunteers, directors, successors, assigns and legal counsel[?]"
21 Is he required to interview each person he does not know in order
22 to determine whether or not such person is affiliated with a
23 Scientology-related organization. Since the injunction is not
24 clear about what Armstrong can or cannot do, however, this
25 provision is vague and unclear.

26 **C. THE AMBIGUITY OF THE INJUNCTION ALLOWS SCIENTOLOGY TO**
27 **ENFORCE IT IN AN ARBITRARY AND DISCRIMINATORY MANNER**

28 Living under a rule of law entails various suppositions, one

1 of which is that all persons are to be entitled to be informed
2 what the State commands or forbids. Papachristou v. City of
3 Jacksonville (1972) 405 U.S. 156, 162. As in the case of an
4 ordinance, an injunction or court order is void for vagueness when
5 it fails to give a person of ordinary intelligence fair notice
6 regarding what contemplated conduct is forbidden, and because it
7 encourages arbitrary and erratic enforcement. Ibid. An ambiguous
8 and vague order

9 permits and encourages an arbitrary and discriminatory
10 enforcement of the law. It furnishes a convenient tool for
11 "harsh and discriminatory enforcement by local prosecuting
12 officials, against particular groups deemed to merit their
13 displeasure."

12 Id. 405 U.S. at 170.

13 These principles are "especially true where the uncertainty
14 induced by the [order] threatens to inhibit the exercise of
15 constitutionally protected rights." Colautti v. Franklin (1979)
16 439 U.S. 379, 391 quoting Grayned, supra.

17 **D. Scientology's Animus Against Armstrong**
18 **Has Been Judicially Recognized**

19 In Church of Scientology of California v. Armstrong (1991)
20 232 Cal.App.3d 1060, 1067, 283 CR 917, the Court of appeal
21 affirmed Judge Breckenridge's finding that Scientology declared
22 Defendant Armstrong to be a suppressive person which labelled him
23 as an enemy of the church and subjected him to the "Fair Game
24 Policy." According to the Fair Game Policy, such persons upon
25 whom it is imposed, "[m]ay be deprived of property or injured by
26 any means by any Scientologist without any discipline of the
27 Scientologist. May be tricked, sued or lied to or destroyed."
28 Ibid.

1 **E. Scientology's Anti-Armstrong Animus Appears On The Face Of**
2 **Its Papers In Support Of The OSC Re Contempt And Motion In**
3 **Limine Because It Charges Conduct To Violate The Injunction**
4 **When It Clearly Does Not**

5 In the instant matter, one need look no further than
6 Scientology's papers in support of its OSC and its motion in
7 limine to see the discriminatory enforcement of Judge Sohigian's
8 order at work.

9 In Scientology's memorandum in support of the OSC, it lists
10 "Armstrong's willful disobedience of the subject order (through
11 his refusal to cease and desist from the prohibited assistance
12 after direct notice and demand by Church counsel)" as set forth in
13 "Bartilson Dec. ¶¶ 4, 5, 9, 11, 12, 13, and 14." (Memo. in
14 Support of OSC at pp. 12:28-13:3.)

15 **1. A Statement Of Intention Regarding The**
16 **Contract Is Not A Violation Of A Court Order**

17 In paragraph 4, Bartilson states Armstrong's following
18 deposition statement to constitute a violation of the order:

19 A. . . . I have absolutely no intention of following
20 that settlement agreement. I cannot. I cannot logically. I
21 cannot ethically. I cannot morally. I cannot psychically.
22 I cannot philosophically. I cannot spiritually. I cannot in
23 any way. And it is firmly my intention not to honor it.

24 Q. No matter what a court says?

25 A. No court can order it. They're going to have to
26 kill me.

27 In fact, Armstrong is correct inasmuch as Judge Sohigian did
28 not order the performance of the contract. For example, he did
not order performance of the provisions requiring Armstrong not to
testify before any governmental agency unless subpoenaed and to

1 avoid service of process of such subpoena. ¹/

2 **2. Notification Of The Los Angeles Times Of The Issuance Of The**
 3 **Injunction Is Not A Violation Thereof**

4 In Paragraph 5 of the Bartilson declaration, it is alleged
 5 that Armstrong notified Los Angeles Times reporter Mr. Welkos of
 6 the issuance of the Sohigian ruling. In no way can this possibly
 7 be construed as a violation of the preliminary injunction.

8 **3. Providing A Videotape to Someone Whom A Scientology Staff**
 9 **Member Is Suing Is No Violation Of The Order Because**
 10 **It Is Beyond The Order's Scope**

11 In Paragraphs 21-22 of the Bartilson Declaration it is
 12 alleged that Armstrong violated the Order by providing a
 13 videotaped interview to Jerry Whitfield whom Scientology has sued
 14 through one of its staff members in Casillas v. Whitfield, Los
 15 Angeles Municipal Court Case No. 91K49349. Since Whitfield is a
 16 defendant adverse to Scientology, he is beyond the scope of the
 17 Order inasmuch as the Order applies only to individuals or
 18 entities who are claiming against Scientology.

19 **4. Scientology Lulled Armstrong Into Believing That Routine**
 20 **Clerical Duties Are Beyond The Scope Of The Injunction And**
 21 **Now Predicates Such Actions As Injunction Violations**

22 Scientology at the May 27, 1992 hearing on its preliminary
 23 injunction motion argued that Armstrong had violated the contract
 24 by working as a paralegal for Ford Greene in violation of
 25 Paragraph 7-G. (Exhibit C to Opposition to OSC, Transcript, May

26 ¹ Compare the provision of Paragraph 7-H requiring
 27 avoidance of subpoenas to testify (OSC Appl. Ex. B, pp. 10-11)
 28 with Paragraphs 6(a)-(d) of the preliminary injunction which allow
 Armstrong not to avoid such service. (OSC Appl. Ex. A, p. 2.)
 Likewise, the scope of 7-H in the contract is universal while the
 Order does not limit Armstrong from providing information to
 Governmental Agencies or to parties being sued by Scientology.

27, 1992, at p. 45:6-27)

As to such alleged violation, Scientology agreed there had to be a "nexus between Armstrong's behavior on the one hand and something having to do with information that he ha[d] because of his affiliation with [Scientology] on the other hand[.]" (Id., at p. 48:28-50:25.) Indeed, the discussion regarding Paragraph 7-G between Judge Sohigian and Scientology counsel regarding "some reasonable construction of the contract" (Id., at p. 51:11) proceeded as follows:

THE COURT: . . . what we're trying to do is we're trying to construe the agreement reasonably so that we know what it means to quote "voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations" and so forth, end quote. Voluntary assistance or cooperation doesn't mean voluntary assistance or cooperation which doesn't trade on some special talent or skill Mr. Armstrong has . . .

MR. WILSON: Obviously not. I mean, obviously the intent of the agreement was that there had to be some connection between what Armstrong was doing and what he had previously been involved with with the organization.

(Id., at p. 50:5-25.)

Thereafter, during the course of his July 22, 1992 session of Mr. Armstrong's deposition, Mr. Wilson advised him that the performance of routine clerical and paralegal duties were not considered to be violations of a reasonable reading of the injunction.

Q. . . . When was the last time you worked on the Aznaran case as a paralegal?

A. Well, again, if by that you mean that because I'm a paralegal I answered the phone when Vicky was calling, am I working on the Aznaran case as a paralegal? [¶] If you say that's not the case and that's not the way you construe paralegal activity with regard to a case, then I would say it's quite some time ago.

Q. That's how I understand paralegal activity. It's

1 not just that you answer the phone.

2 A. So it's not just clerical duties that I would do
3 with any, any case"

4 Q. I will define it this way. If you answer the phone
5 because one of your duties is to answer the telephone in the
6 office, that is not part of your duties as a paralegal on the
7 Aznaran case. [¶] But if you summarize a deposition, if you
8 prepare pleadings, if you file pleadings, it's a paralegal
9 duty. If you type pleadings, it's a paralegal duty.

10 A. Right. None of those things.

11 Q. When you say "quite some time," can you give me a
12 little bit more specifics on that and how long has it been
13 since you have done any paralegal work on the case?

14 A. Boy, I think probably, I think probably September
15 '91.

16 Q. Okay. Of course paralegal duties would include
17 communications from the Aznarans. Except if the
18 communication was "have Mr. Greene call me," I wouldn't
19 consider that a paralegal duty. But if the communication was
20 anything substantive with regard to the case, I would
21 consider that a paralegal duty, so would that change your
22 answer? Since September '91, have there been any substantive
23 communications about the case with the Aznarans without
24 revealing the communication.

25 MR. GREENE: That's fine. Go ahead and answer it.

26 THE WITNESS: Okay, then the answer is no.

27 (See, Exhibit K to opposition to OSC, at pp. 190:2-191:15)

28 Q. And in the intervening period when Mr. Greene was
not counsel of record, I take it you did no work on the
Aznaran case at all?

A. Again when you say no work on the Aznaran case,
we're using the same definition of paralegal?

MR. GREENE: Gerry, it's a simple question and again
it's a "yes" or "no" answer.

THE WITNESS: In that I received telephone calls at
that time or relayed telephone calls then which may have
related to the Aznaran case, then, yes, I did.

MR. WILSON: Q. It's possible that you may have
relayed a phone message that related to the Aznaran case; is
that right?

1 A. Right.

2 Q. Except for that, have you done any work on the
3 Aznaran case?

4 A. Except for phone messages?

5 Q. Right.

6 A. Routed or logged, mailed articles.

7 Q. Would that be the same way a receptionist or
8 secretary would send mail around the office?

9 A. Exactly, right.

10 Q. And except for that, have you done anything related
11 to the Aznaran case?

12 A. I believe that anything I have done relating to the
13 Aznaran case has been that sort of office clerk, secretary in
14 nature.

15 (Id. at pp. 197:3-198:10; see also, pp. 199:19-200:6)

16 Now, in contradiction of the foregoing representations of the
17 scope of the order, Scientology asserts that Armstrong has
18 violated the injunction by requesting a fax of a ruling in the
19 Aznaran case (Bartilson Decl. ¶ 9), by executing two proofs of
20 service in the Aznaran case (Bartilson Decl. ¶ 11), and by
21 relaying telephone calls between the Aznarans and Ford Greene, and
22 by providing unspecified assistance to claimants Tillie Good,
23 Denise Cantin and Ed Roberts. (Bartilson Decl. ¶ 12.).

24 5. Conclusion

25 Evidence which pertains to Scientology's declaration of
26 Armstrong as a suppressive person resulting in the imposition of
27 the Fair Game Policy upon him is relevant to his defense of the
28 ambiguity of the order and Scientology's discriminatory
enforcement of it against Armstrong. Likewise, evidence
pertaining to Scientology's litigation tactics and strategies in

1 implementing the Fair Game Policy is relevant as well. Thus,
2 Scientology's effort, in limine, to cut Armstrong off from
3 asserting this defense should be rejected.

4 **III. PUBLIC POLICY DEFENSE THAT THE CONTRACT IS INTENDED TO**
5 **OBSTRUCT JUSTICE AND WAS PROCURED BY FRAUD REQUIRE THE**
6 **EXAMINATION OF FACTS PRECEDING MAY 28, 1992.**

7 A party need not plead the illegality as a defense and the
8 failure to do so constitutes no waiver. In fact, the point may be
9 raised at any time, in the trial court or on appeal, by either the
10 parties or on the court's own motion. 1 Witkin, Summary of
11 California Law (1987), Contracts, § 444, at p. 397; LaFortune v.
12 Ebie (1972) 26 Cal.App.3d 72, 75; Lewis & Queen v. M.M. Ball Sons
13 (1957) 48 Cal.2d 141, 147-148. The court will look through
14 provisions, valid on their face, and, with the aid of parol
15 evidence, determine whether the contract is actually illegal or is
16 part of any illegal transaction. 1 Witkin, supra, § 445 at p. 398;
17 Lewis & Queen, supra.

18 The object of a contract must be lawful. Civil Code sections
19 1550, 1596. If the contract has a single object, and the object
20 is unlawful, the entire contract is void. Civil Code section
21 1598. Civil Code section 1668 states:

22 All contracts which have for their object, directly or
23 indirectly, to exempt anyone from responsibility for his own
24 fraud, or willful injury to the person or property of
25 another, or violation of law, whether willful or negligent,
26 are against the policy of law.

27 Witkin, California Criminal Law (2d ed. 1988), Vol. 2,
28 section 1132, at p. 1311, states:

It is obviously an obstruction of justice to conceal,
suppress, falsify or destroy evidence which is relevant and
known to be sought or desired for use in a judicial
proceedings or an investigation by law officers.

1 An agreement to suppress evidence or to conceal a witness is
2 illegal. Penal Code sections 136, 136.1 ^{2/} and 138. ^{3/}

3 The underlying settlement agreement in this case is illegal
4 because it was designed to suppress facts discrediting
5 Scientology, which thus suppressed would obstruct justice.

6 "Agreements to suppress evidence have long been held void as
7 against public policy, both in California and in most common law
8 jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d
9 829, 836-37; People v. Pic'l (1982) 31 Cal.3d 731, 183 CR 685;
10 Mary R. v. B&R Corporation (1983) 149 Cal.App.3d 308, 196 CR 871.

11 Thus, where a contract is made either (1) to achieve an illegal
12

13 ² Penal Code section 136.1, in part, provides:

14 (a) Except as provided in subdivision (c), any person who
15 does any of the following is guilty of a misdemeanor:

16 (1) Knowingly and maliciously prevents or dissuades any
17 witness or victim from attending or giving testimony at any trial,
18 proceeding, or inquiry authorized by law.

19 (2) Knowingly and maliciously attempts to prevent or
20 dissuade any witness or victim from attending or giving testimony
21 at any trial, proceeding, or inquiry authorized by law.

22 (c) Every person doing any of the acts described in
23 subdivision (a) or (b) knowingly and maliciously under any one or
24 more of the following circumstances, is guilty of a felony . . .
under any of the following circumstances: . . .

(2) Where the act is in furtherance of a conspiracy...

(4) Where the act is committed by any person for pecuniary
gain or for any other consideration acting upon the request of
another person. All parties to such transaction are guilty of a
felony.

(d) Every person attempting the commission of any act
described in subdivisions (a), (b), and (c) is guilty of the
offense attempted without regard to success or failure of such
attempt.

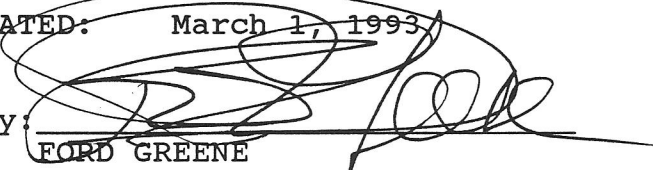
25 ³ "The general rule controlling in cases of this character
26 is that where a statute prohibits or attaches a penalty to the
27 doing of an act, the act is void . . . The imposition by statute
28 of a penalty implies the prohibition of the act to which the
penalty is attached, and a contract founded upon such act is
void." Smith v. Bach 183 Cal. 259, 262 quoted in Severance v.
Knight-Counihan Co. (1947) 29 Cal.2d 561, 177 P.2d 4, 8.

1 purpose, or (2) by means of consideration that is not legal, the
2 contract itself is void. Witkin, Summary of California Law (9th
3 Ed. 1987) Vol. 1, Contracts, § 441 at 396.

4 To enforce part of an illegal contract, it must be analyzed
5 as to whether it is "entire or severable." The key is if money
6 consideration can be apportioned to each of the items. Brown v.
7 Freese (1938) 28 Cal.App.2d 608. Whether a contract was entire or
8 separable depends upon its language and subject matter, and this
9 question is one of construction to be determined by the court
10 according to the intention of the party. The contract must have a
11 lawful object. Civil Code § 1596. If there is a single unlawful
12 object, it is void. Civil Code § 1608. Only when a contract has
13 clearly severable stipulations for each of which there is a
14 separate consideration expressed, and there is no reason to
15 suppose the expressed consideration for one part forms a part of
16 consideration for another part, can the contract be separated. 14
17 Cal.Jur.3d, Contracts, p. 336; McVicker v. McKenzie 136 Cal. 656.
18 Only if the court can lay illegal consideration to a specific
19 portion of the contract may it enforce other parts. Keene v.
20 Harling 61 Cal.2d 318.

21 Since the money paid to Armstrong logically is applicable to
22 the settlement of his cross-complaint, Judge Sohigian could not
23 apportion it to support the portions of the contract which violate
24 public policy.

25 DATED: March 1, 1993

26
27 By: 
FORD GREENE

By: _____
PAUL MORANTZ

28 Attorneys for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO MOTION IN LIMINE on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

☒ (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

☐ (Personal) I caused said papers to be personally service on the office of opposing counsel.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: March 1, 1993



1 Andrew H. Wilson
 2 WILSON, RYAN & CAMPILONGO
 3 235 Montgomery Street
 4 Suite 450
 5 San Francisco, California 94104
 6 (415) 391-3900

7 Laurie J. Bartilson
 8 BOWLES & MOXON
 9 6255 Sunset Boulevard, Suite 2000
 10 Hollywood, CA 90028
 11 (213) 661-4030

12 Attorneys for Plaintiff
 13 CHURCH OF SCIENTOLOGY
 14 INTERNATIONAL

FILED

NOV 16 1994

HOWARD HANSON
 MARIN COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

15 CHURCH OF SCIENTOLOGY
 16 INTERNATIONAL, a California not-
 17 for-profit religious corporation,

18 Plaintiff,

19 vs.

20 GERALD ARMSTRONG; DOES 1 through
 21 25, inclusive,

22 Defendants.

FILED
 LOS ANGELES SUPERIOR COURT

MAR 03 1993

JAMES H. DEMPSEY, CLERK
 BY INNA R. MATTHEWS, DEPUTY

157680
) CASE NO. BC 052395

) OBJECTION TO DECLARATION OF
) GARRY L. SCARFF IN SUPPORT
) OF OPPOSITION TO MOTION TO
) COMPEL

) DATE: March 5, 1993

) TIME: 8:30 a.m.

) DEPT: 86

) DISC CUT-OFF: April 2, 1993

) MTN CUT-OFF: April 19, 1993

) TRIAL DATE: May 3, 1993

23 Plaintiff hereby objects to the declaration of Gary Scharff
 24 for the reasons set forth in plaintiff's motion in limine
 25 previously filed herein, and requests that it be stricken and not

26 ///

27 ///

28 ///

1 considered by the Court.

2 DATED: March 3, 1993

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: 
Laurie J. Bartilson

Attorneys for Plaintiff
and Cross-Defendant
CHURCH OF SCIENTOLOGY
INTERNATIONAL

9 \ARMSTRON\scarff.obj

PROOF OF SERVICE

1159

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On March 3, 1993, I served the foregoing document described as OBJECTION TO DECLARATION OF GARRY L. SCARFF IN SUPPORT OF OPPOSITION TO MOTION TO COMPEL on interested parties in this action by

[] placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Paul Morantz
P.O. Box 511
Pacific Palisades, CA 90272

[] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 1993, at Los Angeles, California.

[X] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on March 3, 1993, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Carol C Nelson
Type or Print Name


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

1161

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On MARCH 3, 1993, I served the foregoing document described as OBJECTION TO DECLARATION OF GARRY L. SCARFF IN SUPPORT OF OPPOSITION TO MOTION TO COMPEL on interested parties in this action by

[] placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Ford Greene **By U.S. Mail & Fax**
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 94960-1949

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul Bradford
Type or Print Name

Paul Bradford
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)